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The Solicitors' Journal and Weekly Reporter.

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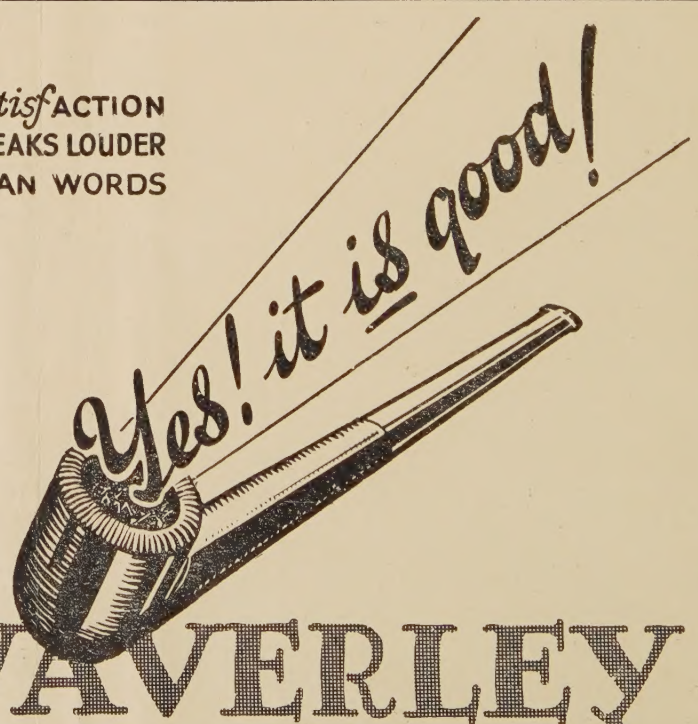

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Current Topics.

Procedure in Legitimacy Declarations under Legitimacy Act, 1926.

WHAT WOULD appear to be an obvious oversight in the drafting of s. 2 (1) of the Legitimacy Act, 1926, was pointed out in *Re the Petition of M. J. Clayton*, *Times*, 22nd June, 1927.

Section 2 (1) of the Legitimacy Act provides that persons claiming to be legitimated may present petitions under the Legitimacy Declaration Act, 1858, but the Legitimacy Declaration Act, 1858 (except s. 3 thereof), was repealed by s. 226, and the 6th Sched. of the Supreme Court of Judicature Act, 1925, which itself contains provisions with regard to legitimacy declarations (*cf.* s. 188 thereof).

Clayton's Petition should carefully be noted, because it contains important directions as to the procedure to be adopted in such cases. There a woman petitioned for a declaration of legitimacy of her three children, two of whom were of age, the other being a minor.

Now, under s. 2 (1), it is the person claiming that he [or his parent or remoter ancestor] is or has been legitimated is the person who is to petition the court. In the above case, therefore, the mother was not the proper person to petition the court, but each of her children.

Another point raised was whether three separate petitions had to be brought by the three children, or whether one comprehensive petition would suffice. Although the learned President did not directly hold that the latter procedure could not be adopted, the directions he gave were that *three separate petitions* had to be presented, but he further directed that these petitions might be *consolidated* and *supported by one set of affidavits and one body of evidence.*

With regard to the position of the Attorney-General, under sub-s. (4) of s. 188 of the Judicature Act, 1925, a copy of every petition for a declaration of legitimacy and of any affidavit accompanying it is to be served on the Attorney-General, but in *Clayton's Petition* the President directed that merely notice of the application need be given to the Attorney-General.

It is submitted, nevertheless, that this does not obviate the necessity of delivering to the Attorney-General, who must be made a respondent, a copy of the petition and any accompanying affidavits (*cf.* also Ord. LA, r. 10 (1), of the County Court Legitimation Rules).

With regard to the persons who are to be made respondents to the petition, in addition to the Attorney-General, every person whose interests may be affected by the declaration asked for, and including possibly the next-of-kin of the putative father, must be before the court, but it does not seem necessary that all such persons should be made respondents, and it may be sufficient merely to cite some of these persons.

Jurisdiction of County Court.

COUNTY COURTS have no jurisdiction to try actions for breach of promise of marriage: County Courts Act, 1888, s. 56. Mr. Justice ACTON held last week (*Parsons* v. *Burgess*) that they have no jurisdiction in an action for the return of presents made in contemplation of marriage. An action had been started in the county court, in which the plaintiff alleged that he and the defendant had engaged to marry each other; that in contemplation of the marriage he had made certain presents; that there had been a breach of the engagement by the defendant and that he therefore claimed the return of the presents. The defendant obtained leave to issue a writ of prohibition to be directed to the county court judge to prohibit further proceedings in the action in that court. Counsel for the applicant (the defendant in the action) contended that the action was really one for damages for breach of promise; counsel for the respondent contended that the action was founded on bailment and was therefore within the jurisdiction of the county court. In finding for the applicant, ACTON, J., said that in his opinion the case was concluded by authority. It seemed to him, especially on the authority of *Hunt* v. *North Staffordshire Railway Company*, 2 H. & N. 451; 26 L.J. Ex. 274, that the claim was really in substance one for damages for breach of promise of marriage, and that the inquiry must involve the question of the breach.

Asking Permission Afterwards.

When the Vicar of Ickleton, having caused his church bells to be melted down and re-cast, applied for a confirmatory faculty to the Chancellor of the Diocese of Ely, his reception may respectfully be described as one of holy anger and pious grief. After stating that it was a serious matter, and that the Vicar might in consequence have been deprived of his living, the Chancellor added "You people seem to think you can do any mortal thing you like with church property. You have no right whatever." He further announced his intention of reporting the Vicar to the Bishop for the irregularity. Irregularity it certainly was; there can be no doubt that a faculty is necessary for the removal of church fixtures, and that, in the absence of one, the Vicar should have let the bells be, however his ears might have been offended. The suggestion, however, that the Vicar's deprivation was even a possible punishment for his imprudence, may be deemed somewhat far-fetched. Possibly the sequence in the learned Chancellor's mind was that, since to ignore the necessity of a faculty is clearly an ecclesiastical offence (see *Sieviking & Evans* v. *Kingsford*, 1866, 36 L.J. (Ec.) 1), and since after an Ecclesiastical Court has found such an offence has been committed, the punishment is entirely in the discretion of the court (unless offence and punishment are regulated by statute, which was not the case here), that of deprivation was not excluded. So the Chancellor might perhaps also have mentioned unfrocking or excommunication to add to the effect. As a matter of common sense, of course, the Vicar is as safe in his living as the reverend incumbent of Bray ever was in his, though the issue whether he will have to suffer formal censure and pay all the costs of the proceedings is a different matter. Monition to leave the bells alone would now be useless, for, in the Chancellor's opinion, their especial value has been irreparably destroyed in the process of re-casting. Perhaps David Copperfield, when he was with Spenlow and Jorkins, might have considered whether the Vicar could be enjoined to public penance by the Chancellor—a punishment then possible (see *Chick* v. *Ramsdale*, 1835, 1 Curteis Ecc. 34), and, it may be, not even now unlawful. If modern usage would not countenance ancient penance, however, it has been held in comparatively recent times that, when an ecclesiastical offence has been committed, the court cannot entirely absolve the offender, but must in some degree censure or punish him: see *Martin* v. *Mackonochie*, 1882, 7 P.D. 94, at p. 99.

Forcing the Accused to give Evidence.

The Criminal Evidence Act, 1898, was passed to give the accused a right to give evidence on his own behalf, and though it was, and is, reasonable to accept as one of its consequences that a number of guilty persons are likely to incriminate themselves by going into the witness-box and submitting to cross-examination, and, as another of its consequences, judicial comment on failure to use the rights conferred by the Act (though not comment by the prosecution, which is barred by the Act itself), it was never intended that any pressure should be brought to bear upon the accused to get him into the witness-box. Unfortunately, however, this is sometimes used. Instead of being merely informed of their right, and left to decide for themselves whether they will use it, the accused are, more or less, peremptorily invited by the bench (the offenders are usually courts of summary jurisdiction) to go into the witness-box. But the strangest perversion of the Act is the practice of one bench, which we do not name, who will not allow a defendant to call witnesses unless he himself goes into the witness-box. This is contrary to the whole tenor of the Act, which, on the face of it, was passed to give an additional privilege, and has an express saving for the right of a person to make a statement without being sworn. If any further statutory authority is wanted, it can be found in s. 12 of the Criminal Justice Act, 1925, which, in dealing with one stage of the proceedings (to every stage of which the opening words of the Criminal Evidence Act, 1898, says it shall apply) speaks of the defendant stating that he desires "to give evidence on his own behalf *and* to call witnesses, *or* to call witnesses *only*." The worst of illegal practices of this kind is that they can go on for a long period unchecked, the unhappy prisoner being too ignorant to assert his rights, and often too poor to pursue them to a higher court. But the justices concerned, if they happen upon a defendant with courage and means, may have a severe shock.

Tax on Award for Invention.

The House of Lords have affirmed the decision of the Court of Appeal in *Constantinesco* v. *The King*, *The Times*, 12th July, 1927, to the effect that awards by the Royal Commission on Awards to Inventors in respect of the user by the Crown, and also in respect of the communication to and user by a foreign government, of a patented invention, were assessable to income tax.

The appellant in the above case had invented certain synchronising gears for the firing of machine guns carried by aeroplanes, whereby the discharges from the machine guns were made to synchronise with the intervals between the blades of the propellers. This invention was taken over by the Government and was manufactured by the Government and its agents, but awards in respect of the user thereof were made to the appellant by the Royal Commission on Awards to Inventors. The main point in the above appeal was whether the sums so awarded were to be regarded as capital sums, or on the other hand as annual profits or gains within the meaning of the Income Tax Act, 1918. The House of Lords came to the conclusion that the awards were not in the nature of capital sums and that they were accordingly assessable to tax. As the Lord Chancellor pointed out in his judgment, "the payments in question were made in respect of the use of the invention over a period of time, and the claim was for royalties in respect of the successive user. The *corpus* of the patent was not taken away from the appellant, but remained in him."

Two further points were taken by the appellant in *Constantinesco* v. *The King*, and reference may briefly be made to them.

The first point raised was whether the tax had been rightly deducted at the source under r. 21 (1) of the general rules applicable to all schedules of the Income Tax Act, 1918. Rule 21 (1) provides that "upon payment of any . . . *royalty or other sum paid in respect of the user of a patent*, not payable or not wholly payable, out of profits or gains brought into charge, the person by or through whom any such payment is made shall deduct thereout a sum representing the amount of the tax thereon at the rate of the tax in force at the time of payment." It was argued on behalf of the appellant that the payment was not a royalty or other sum paid in respect of a patent, presumably because the validity of the patent had not been admitted by the Crown. But this argument could scarcely be expected to prevail, since the validity of the patent must necessarily have been recognised and established by the award itself which was made to the appellant by the Royal Commission. At any rate the House of Lords did not accede to the contention of the appellant on this point. The second point that was taken, and one which would appear to be open to some argument, was that r. 21 (1) only applied to subjects of the Crown and not to the Crown itself, and that the Crown accordingly should have paid the whole sum to the appellant, without any deduction, and subsequently made an assessment to income tax in respect thereof.

Unfortunately this point was only raised in the Lords, for the first time, and the House refused to allow any amendment, on the grounds, *inter alia*, that the Crown would be prejudiced thereby, since the time for making the assessment had passed. The House accordingly expressed no opinion on this point, which certainly appears to be of some substance.

The Effect of the Great War on English Criminal Law & Procedure.

It was to be expected that, among the consequences of the war, there would be changes in the law to meet the changed social and political conditions it produced. With institutions as stable as our own it is not surprising that these changes have taken the shape, not so much of new departures, as of the acceleration of certain movements which had already begun, and of the development of tendencies which had long been latent.

Legislative method.—In common with other branches of English law, our post-war criminal law exhibits the rapid growth of legislation by Departments of State. This form of legislation is the direct outcome of pressure on Parliamentary time, and well illustrates the liability of constitutional development to take the line of least resistance. Parliament has for very many years been overburdened with business, but has been reluctant to delegate law-making powers of any considerable scope to minor elective bodies. This jealous retention by Parliament of the law-making power has at last yielded to necessity, but the delegation has been to the administrative Departments of State and has been masked by its being in form merely a grant of authority to make rules for carrying out the purposes of Acts of Parliament whose principles Parliament itself has determined. The sum total, however, of the powers delegated by way of such specific endowment is tending to become greater than would have been conferred by the gift of general powers to lesser authorities to legislate within prescribed limits, or even on all but reserved subjects.

The process of delegation has, in more recent times, begun to pass from the specific to the general, until, under a wide authority "to remove difficulties" (see, for example, s. 67 of the Rating and Valuation Act, 1925), a Government department can alter the statute law itself; and (see the Aliens Restriction (Amendment) Act, 1919, s. 16) an Act of Parliment can be repealed, and re-enacted with modifications by Order in Council.

These things are not merely post-war phenomena; power "to remove difficulties," and for that purpose "to modify the provisions of this Act so far as may be expedient and necessary," was given to the National Health Insurance Commissioners by s. 78 of the National Health Insurance Act, 1911, and s. 108 of that Act gave the same commissioners power to create felonies, by regulations applying to their stamps the provisions of the Stamp Duties Management Act, 1891. The section does not of course mention felony; legislation by reference and application requires expert study for its full effects to be appreciated.

Before the war the regulation making power would be conferred by one section of an Act which itself dealt with its subject in detail. The war gave us the "skeleton" Act of Parliament, to be supplied with flesh and blood by Orders in Council or Departmental Regulations. The Defence of the Realm Acts were brief and general; the Defence of the Realm Regulations were lengthy, comprehensive and detailed. They have as their direct lineal successors, with a strong family resemblance, the Emergency Powers Act, 1920 and the Orders in Council which have from time to time been issued under it. The Proclamation of Emergency under this Act clothes the Government with many extraordinary powers, the exercise of which might indeed in pre-war times have been practised, but would have been the subject of a subsequent Act of Indemnity. It has been said with a good deal of truth that the Act and the regulations thereunder go so far as to make some forms of treason triable summarily.

Another legislative offspring of "Dora" was the Restoration of Order in Ireland Act, 1920, which came near having some curious reactions on English legal development. A committee appointed by the Prime Minister in 1923 reported in favour of borrowing from the regulations under that Act, and enacting by statute, a general power to compel persons to attend before magistrates to give information as to crimes and intended crimes, and also a wide general power of issuing search warrants. The first recommendation was not acted upon. A clause embodying the second was included in the Criminal Justice Bill in 1925, but was withdrawn in the face of strong opposition in Parliament.

War legislation which has become part of the general law.—So far as they imitate the Defence of the Realm Act and Regulations, the Emergency Powers Act and Emergency Regulations come in this category, although they are intermittent in their action. There are other war laws in continuous operation. For example, the Aliens Restriction Acts have been prolonged by Expiring Laws Continuance Acts, and will almost certainly eventually be incorporated in our permanent law. The Aliens Acts and the Orders in Council under them form a full and drastic code, which is strictly administered by an efficient organisation.

The provisions of the Defence of the Realm Regulations dealing with the supply and use of cocaine and other narcotic and stimulant drugs have been expanded into severe penal statutes, not likely to be modified save in the direction of greater stringency. The Dangerous Drugs Acts are supplemented by a mass of subordinate legislation, a convenient term in use to describe Orders in Council and departmental regulations which subserve the objects of Acts of Parliament.

There are other instances of war-time survivals, such as the Registration of Business Names Act, 1916, which the High Court seems to be interpreting always in favour of strict control. Another instance is the legislative novelty embodied in the Shops (Early Closing) Act, 1920, which enacts early closing in the very form laid down by an Order of the Secretary of State made during the war, and scheduled to the Act of which it becomes part. At present the Act is renewed annually, but there is no doubt that in some shape this legislation will persist.

Regulation of professions with penal sanctions.—The tendency to regulation of particular professions and occupations, with registration of their members, or of the places where their activities are carried on, seems to have been stimulated by the war-time necessity for controlling the individual in the interests of the community. The nation has learned to accept discipline with much more equanimity than in former times. The process was well in action before the war, partly as a result of the efforts of the larger municipalities. Thus, the London County Council had procured the registration and inspection of employment agencies in 1905, of petroleum oil depôts in 1912, of lying-in homes in 1915, and of massage establishments in the same year. Later Acts have, in some instances, increased control by requiring not merely registration but licensing. Recently there have been general enactments on similar lines; for instance, from the 1st January, 1927, all maternity homes have to be registered.

Professions are rapidly becoming organised and exclusive. There is, for example, now a statutory register of nurses, and other professions are seeking similar protection. All chartered associations now have their names, uniforms and badges protected.

These are only some illustrations of the effects of the movement, which will undoubtedly continue. That movement is a further definite departure from *laissez-faire*, and a harking back to ideas of the Middle Ages repugnant to the apostles of that doctrine. The observance of all these new regulations is sought to be secured by punishments for their contravention. A very considerable number of new offences is thus created.

New laws to meet post-war conditions.—Some new laws have come into existence as a direct result of the war. The familiarity of our male population with the use of firearms acquired in the fighting forces, and their wide distribution,

coupled with fear of civil disturbances, produced the Firearms Act, 1920, by which civilians desiring to keep firearms must obtain a police permit. War experience also led to the very drastic Official Secrets Act, 1920. Greater restrictions on the supply of intoxicating liquor, during hostilities necessary and inevitable, and the observed advantages of the consequent greater sobriety of the people at large, produced the enactment of the shorter permitted hours for the sale of alcohol now laid by the Licensing Act, 1921.

Police.—The expansion of the country's police forces, to aid in upholding the existing constitution, threatened, or thought to be threatened, by the unrest following the war, is represented by the present law as to special constables, embodied in the Special Constables Act, 1914, a war measure effectively made permanent by the repeal in 1923 of the words which limited its application to the period of the war. A great auxiliary police force, which has proved its efficiency, has been created, to the considerable strengthening of the present order of things.

Obsolescence of the jury.—The grand jury, whose functions were suspended during the war, narrowly escaped almost total extinction, on grounds of economy, in 1925. It was saved only by a free vote of the House of Commons, conceded to prevent the loss of a Bill containing other important proposals.

The scope of the petty jury, steadily contracting before the war, has become still more circumscribed. As long ago as 1885 MAITLAND was explaining, that in considering summary jurisdiction, he was "turning towards the rising sun." He had before him the criminal statistics for 1883, which showed that in that year "about 14,000 persons were tried for crime before a jury, while the number of summary convictions for the one offence of simple larceny was above 27,000."

The sun has since risen much higher. In 1913, the year before the war, 12,511 persons were tried by a jury for indictable offences and 50,758 were tried summarily for indictable offences; this in addition to 680,290 tried for summary offences, many as serious as indictable offences. In 1925, the last year for which we have figures, 8,139 persons were tried by a jury for indictable offences, and 49,404 were tried by justices for such offences. This disproportion will be even more marked when the full effect of the Criminal Justice Act, 1925, is felt in the statistics. The sun is not yet at the zenith.

In addition to this large transfer from the jury to the justices by the direct method of making indictable offences triable summarily by consent, there are other devices for enlarging the province of the magistrates. When new offences are created they are commonly made triable either only summarily or, if triable at all by a jury, only so triable at the expressed wish of the prosecution; though the accused can usually claim trial by jury if the maximum punishment on summary conviction exceeds three months' imprisonment. The jurisdiction of justices has been much enlarged as a result of the post-war search for economy. Large categories of indictable offences, hitherto only triable by a jury, have become triable summarily by the Criminal Justice Act, 1925, under sections based on the recommendations of a committee appointed expressly to suggest steps directed to financial saving. These provisions are having their calculated effect. Already judges and recorders are pointing out that juries have a greatly reduced number of charges brought before them.

With the same object of economy the jurisdiction of quarter sessions has been enlarged at the expense of assizes.

A further large economy has been brought about by a novelty in English criminal procedure, borrowed, with modifications, from South Africa—the excusing the attendance of witnesses at the trial by jury, where those witnesses are to formal matters, or the attitude of the accused indicates that their attendance can be dispensed with.

Weakening of the presumption of innocence.—A change in spirit is indicated by the increasing tendency to shift the onus of proof on to the accused. Under the pressure of a national struggle for life, war legislation overrode the privileges of the individual for the safety of the public, and the presumption of innocence, the basis of our modern criminal trial, was, in cases, substantially modified. Ordinarily in a criminal trial the prosecution has to prove every fact or circumstance which is material and necessary to constitute the offence charged. There have always been exceptions, but they are growing in number. Thus, if any question arises under the Aliens Order, whether a person is an alien or not, or is an alien of a particular class or not, the onus is on the accused to prove he is not an alien or not an alien of that class, as the case may be. Where a person lands in the United Kingdom in contravention of the Acts, the master of the ship, or the pilot or commander of the aircraft bringing him, is deemed to have aided and abetted the offence, unless he proves to the contrary.

Connivance.—The shifting of the burden of proof referred to above is linked with a revival of the old notion of misprision, which appears under the new name of "connivance." "Connivance" as a term in the criminal law, appeared in many of the war-time Food Orders, and also in the Military Service Acts, but post-war laws took it up. Thus, sections of the Housing (Additional Powers) Act, 1919, after creating certain offences, provided that "where the person guilty of an offence under this section is a company, every director and officer of the company shall be guilty of the like offence, unless he proves that the act constituting the offence took place without his consent or connivance."

The onus of proof is shifted in a similar way by the Dangerous Drugs Act, 1923, and there are other instances.

The tendency to make a crime of connivance, by which term it is to be supposed is meant a sort of criminal shutting of the eyes, is vividly illustrated by the recommendation of the committee adverted to above which suggested that persons should be compellable, under penalties, to give information as to crimes or intended crimes. It is fairly certain that the notion has not yet reached the limits of its development.

A wide subject.—This article could be expanded into a treatise before its subject would be exhausted. Merely a few general observations are offered, with illustrations selected from a wide range available. What has been said is intended to indicate some of the ways in which the war has affected our criminal law and procedure, and some of the lines of development they are taking in consequence. The whole subject, both in its present stage and its possible future, deserves much fuller exposition than can be here attempted.

The Witchcraft and Vagrancy Acts.

BY E. P. HEWITT, K.C., LL.D.

(*Continued from p.* 504.)

II.

VAGRANCY.

THE main object of the Vagrancy Acts—as their title indicates—was to deal with vagrants; but, as will be seen later, they have been construed as extending to persons to whom the term "vagrants" cannot reasonably be applied. The Vagrancy Act of Henry 8 (22 Henry 8, c. 12) was entitled "An Act concerning the punishment of beggars and vagabonds," and provided that justices of the peace should grant licences to aged poor and impotent persons to beg within certain limits. Those begging outside such limits were to be put in the stocks, and beggars without licence were to be whipped. Whipping was also to be applied to persons able to labour who begged or were vagabonds, and they were to be sent to their place of birth, there to labour.

It is interesting to notice that under s. 4, the Act extended to "scholars of the Universities" of Oxford and Cambridge going about begging, not being under the seal of the Universities,

and any other idle persons, " some of them using subtle, crafty, and unlawful games and plays, and some of them feigning to have knowledge of *physic, physiognomy, palmistry, or other crafty science*, whereby they bear the people in hand that they can tell their destinies, deceases, and fortunes, and such other like *fantastical imaginations*, to the deceit of the King's subjects." If found guilty the offender was to be whipped " at two days together after the manner before rehearsed," —i.e., " till his body be bloody by reason of such whipping " ; and if the offence was repeated, the pillory and the cutting off of an ear were to be added to fresh whippings.

It will be observed that in this statute, physic and physiognomy, as well as palmistry, are described as " crafty sciences " and " fantastical imaginations."

By an Act of Elizabeth (39 Eliz., c. 4), passed for the " punishment of rogues, vagabonds, and sturdy beggars," the former Vagrancy Acts were repealed. Justices were to cause Houses of Correction to be set up ; and by s. 2 all persons calling themselves scholars, going about the country begging, and all idle persons going about either begging or using any subtle craft or unlawful games or plays, or feigning to have knowledge of " physiognomy, palmistry, or other like crafty science, or pretending that they can tell destinies, fortunes or such other like fantastical imaginations," and all fencers, jugglers, tinkers, pedlars, wandering abroad, were to be deemed " rogues and vagabonds," and were to be punished by whipping and being sent to the house of correction.

It will be observed that, in this Statute of Elizabeth, physiognomy is still classed with palmistry as a " crafty science " and a " fantastical imagination," but " physic " has disappeared from this category.

An Act of James 1 (1 James 1, c. 7), passed " for continuance and explanation " of the Act of Elizabeth, confirms all the most harsh provisions of the earlier Statute, and adds (*inter alia*), a provision that in the case of a (so-called) " incorrigible rogue," there should be branding, such branding to be " so thoroughly burned and set on upon the skin and flesh that the letter ' R ' be seen and remain for a perpetual mark upon such rogue during his *or her* life."

One other Act should be noticed before reference is made to the existing Vagrancy Act. The Statute, 17 Geo. 2, c. 5, contains a list of persons of the vagabond class—persons who run away leaving wife or children a burden on the parish, wandering fencers, players, minstrels, jugglers, " all persons pretending to be gipsies, or to have skill in physiognomy, palmistry, or like crafty science, or pretending to tell fortunes." Offenders were to be whipped or sent to the house of correction—preference, apparently, being given to the favourite remedy of a public whipping.

It is interesting to notice that in this Act of George 2, passed as comparatively recently as 1744, the idea that physiognomy is a " crafty science " is shown to still prevail.

The existing Vagrancy Act, passed in 1824 (5 Geo. 4, c. 83), deserves careful consideration. Like the earlier Acts, its primary object is to deal with vagrants, and it is entitled— " An Act for the punishment of idle and disorderly persons, and rogues and vagabonds, in that part of Great Britain called England." Section 3 contains a catalogue of persons to be deemed for the purposes of the Act " idle and disorderly," including—persons refusing to maintain themselves and family and so becoming chargeable to the parish, pedlars " wandering abroad " and trading without licence, common prostitutes " wandering in the public streets and behaving in a riotous or indecent manner," persons wandering abroad or placing themselves in any public place to beg alms. Any such " idle and disorderly person " may be committed by a magistrate to the house of correction for a month with hard labour.

Section 4 deals with persons regarded by the Act as deserving severer punishment. These are defined as " rogues and vagabonds," and a long list is given of persons of the vagabond and criminal classes to which the section applies, including persons who, having been convicted as " idle and disorderly," commit the same offence again ; persons wandering abroad not having visible means of subsistence and not giving a good account of themselves ; persons behaving in an obscene manner in any public place ; and persons in possession of burglarious instruments with intent to commit a felony. Mingled with these and others of the lowest types of humanity the following will be found :—

> " *Every person pretending or professing to tell fortunes, or using any subtle craft, means or device, by palmistry or otherwise, to deceive and impose on any of His Majesty's subjects.*"

Any person convicted under s. 4 as a " rogue and vagabond " may be committed by a magistrate to prison for three months, with hard labour, and every burglarious instrument or the like is to be forfeited.

Section 5 deals with persons described in the Act as " incorrigible rogues " ; these may be imprisoned for a year, with hard labour, and may receive the familiar punishment of whipping (s. 10).

It is material to observe that by s. 6 anyone is given the right to apprehend any person offending under the Act, and to " take and convey him or her before some justice," or may " deliver him or her to some constable to be so taken and conveyed." And by s. 7 any justice, upon oath being made before him that any person has committed, or is suspected to have committed an offence under the Act, is to issue his warrant to apprehend the person so charged.

In the construction of this Act, various cases have come before the courts upon the question of the true meaning of the words in s. 4 set out above in italics. Although the Act is intended to deal with *vagrants*, in the ordinary sense of that word, its terms have been held to sweep in certain other classes of persons who have in fact a settled home. In *Monck* v. *Hilton* (2 Ex. Div. 268), the question arose of the meaning of the words " or otherwise," which occur after the word " palmistry " in the passage above italicised. The case was not one of fortune-telling but of an ordinary séance. The justices found the table-rappings, etc., to have been fictitious and that the defendant (the medium) intended to deceive. It was held that the defendant was properly charged under the words " palmistry *or otherwise*," contained in the section.

The point upon which there has been most controversy, however, is the question whether an offence can be committed under the above clause if the defendant was honest and free from any intention to deceive. This question has been before the Divisional Court several times, and would no doubt have been taken higher had there been the power so to do ; but an appeal from a conviction under the Act cannot be carried beyond the Divisional Court. The necessity for proving an intention to deceive if a person is charged under the latter part of the clause with " using any subtle craft, means, or device," has not been disputed. The difficulty is confined to cases of fortune-telling. Assuming, as has been held, that the words " to deceive or impose," etc., do not govern the words " pretending or professing to tell fortunes," this does not determine whether deceit must be shown, since the word " pretending " seems to import professing with a dishonest intent.

In *Penny* v. *Hanson*, 18 Q.B.D. 478, the defendant had issued advertisements, offering (upon certain payments being made) to cast nativities—in other words to tell fortunes by the stars. He was convicted under the section, the magistrate finding as a fact an intention to deceive. The Divisional Court (DENMAN and MATHEW, JJ.) left open the question whether an intention to deceive had to be shown, and held that there was sufficient evidence to support the magistrate's finding.

In the Scotch case of *Smith* v. *Neilson*, 23 Ret. 77, a woman was convicted of pretending to tell fortunes, but on appeal the conviction was quashed upon the ground that the complaint did not charge that there was an intention to deceive. The Lord

Justice Clerk observed: "The case for the prosecutor is that it is not necessary that there should be an intent to deceive"; the case was consistent with neither the defendant nor the consulter believing in the matter. "So that it really comes to this, that anyone telling fortunes by reading the lines of the hand is guilty of roguery and vagabondry and liable under the section. *I think this is extravagant.*" In the important case of *Reg.* v. *Entwistle*, 1899, 1 Q.B. 846, the defendant had been convicted of pretending to tell fortunes contrary to the statute. The case was brought before the Divisional Court upon the ground that no intent to deceive and impose was alleged in the information, the information merely stating that the defendant "did *pretend* [my italics] or profess to tell fortunes contrary to the statute." The justices found that the defendant did in fact intend to deceive, and the question on the appeal was whether the charge in the information was sufficient. It was argued in support of the conviction (in effect) that although an intent to deceive was necessary, it was sufficiently alleged by the words "pretending or professing." This contention was upheld by the court. "It is contended," said DARLING, J., "that the intent to deceive not only should be proved at the hearing, but should be alleged in the information. . . . I do not intend to hold that it is not necessary there should be an intent to deceive and impose upon," but that here the justices were satisfied that there was an intention to deceive. And CHANNELL, J., observed: "I think that, in order to render a person liable to conviction on such a charge, the act must have been done in order to deceive and impose on someone. . . . *If there is not deceit, there is not any pretending or professing.*"

In *Davis* v. *Curry*, 1918, 1 K.B. 109, which was also a fortune-telling case, it was held by the Divisional Court (SANKEY and DARLING, JJ., AVORY, J., dissenting) that there was no offence under the section, in the absence of an intention to deceive. "There must be an intention to deceive," said SANKEY, J., "before there can be a conviction." "If the acts mentioned in the statute," said DARLING, J., "are done with no intention to deceive, there is no offence." And both SANKEY and DARLING, JJ., quoted with approval the passage from the judgment of CHANNELL, J., in *Reg.* v. *Entwistle*: "If there is not deceit, there is not any pretending or professing."

The most recent case, and one of great importance, is *Stonehouse* v. *Masson*, 1921, 2 K.B. 818. The defendant had purported to tell the fortunes of two women who visited her, professing to desire her advice, but being in fact members of the police force. There was no evidence that the defendant intended to deceive. The magistrate convicted the defendant, and on appeal the conviction was upheld. The Divisional Court (LAWRENCE, C.J., and DARLING, AVORY, SHEARMAN and GREER, JJ.) held that professing to tell fortunes is an offence under the Act, whether or not there is any intention to deceive. The judgment of LAWRENCE, C.J., loses something of its value from the fact that he assumes deceit; and if there is deceit, then *cadit quæstio*. "I cannot imagine," said the learned judge, "why he (the magistrate) hesitated to find that the appellants did intend to deceive . . . I am astonished that the magistrate did not find the intent, because I cannot imagine anybody holding himself out to tell fortunes for money who does not perfectly well know that he is deceiving and that he intends to deceive." The judgment of DARLING, J., is the reverse of what the same learned judge had decided in *Davis* v. *Curry* (*supra*). It is important to notice, moreover, that both DARLING and AVORY, JJ., profess to be deciding in accordance with the view adopted by the court in *Reg.* v. *Entwistle* (*supra*); DARLING, J., ends his judgment with the words "*Reg.* v. *Entwistle* was rightly decided." *Reg.* v. *Entwistle* has been already referred to, and it is submitted (with great respect) that the view taken in that case, instead of supporting, is inconsistent with that adopted in *Stonehouse* v. *Masson*. The point in *Reg.* v. *Entwistle* may be regarded as one of pleading—namely, whether it was necessary to allege an intention to deceive in the charge; and it was held that, although there was no offence under the section without an intention to deceive, it was unnecessary to expressly allege such intention in the information otherwise than by the use of the word "pretend."

As the matter is left by *Stonehouse* v. *Masson* it follows that any person who gives a hand-reading, at a bazaar or anywhere else—provided that it is done seriously and not merely as a game—is liable to be convicted under the Act, as coming within the very low class of persons described in s. 4 as "rogues and vagabonds," and may even be seized by an ordinary member of the public under s. 6; and that the liability is not affected by the fact that the hand-reader may be perfectly honest and free from any intention to cheat or deceive.

Territorial Jurisdiction over Inland Bays: The "*Fagernes.*"

THE decision of the Court of Appeal in *The Fagernes*: *Owners of the S.S. Cornish Coast* v. *Societa Nationale De Navigazione* (*Times*, 16th inst.), is of great interest and importance, especially to the international lawyer, because the question was there raised as to the jurisdiction of a country over inland seas.

The material facts in the "*Fagernes*" were shortly as follows: The action, which was one for damage by collision against the owner of an Italian vessel, arose out of a collision which took place in the Bristol Channel at a place about 10 to 12 miles distant from the English coast and about 7 to 9 miles distant from the Welsh coast. The point was raised that the English courts had no jurisdiction, since the collision, it was contended, occurred outside territorial waters, and the question therefore arose for consideration as to whether the waters of the Bristol Channel at the place of the collision were to be regarded as being sufficiently "*intra fauces terræ*" to constitute territorial waters.

The ordinary rule of international law and of our common law as well is that a state has jurisdiction over seas and waters within a limit of 3 miles, the waters up to that point constituting territorial waters. This rule was by no means universal. In early times states claimed sovereignty over large expanses of sea, but, with the passage of time, when this so-called sovereignty proved to be merely a shadow, the rule was gradually adopted that a state had sovereignty over marginal waters only to the extent to which it could exercise effective control over the same; and the 3-mile limit was fixed, because that was approximately at that time the range of a gun fired from the shore. Owing to the modern improvements in artillery and the increased range of the modern gun that limit may now be regarded as one that ought to be extended, but apparently international law has not advanced in this direction and the 3-mile limit still obtains at the present day. During the war this limit was recognised not only by the English courts (see, for example, *The Valeria*, 3 B. & C.P.C. 644) but also apparently by the German courts.

It is a moot point, however, whether the above principle extends to inland waters, such as creeks, bays, etc. Certainly some countries—as, for example, France and Germany—claim jurisdiction over inland waters which are more than 6 miles wide from shore to shore, but the question with which we are here concerned is whether a similar rule is recognised by the common law.

It may be convenient to examine such authority as there appears to be.

Reference in the first instance may be made to *Reg.* v. *Cunningham*, or *Cunningham's Case*, as it is ordinarily called, 1859, Bell's Crown Cases, 72. This case raised a question

very similar to that raised in the "*Fagernes*," since it was necessary to determine in that case also whether the English courts had jurisdiction over an offence committed in a part of the Bristol Channel. The offence in question having been committed on board an American vessel then lying in Penarth Roads, three-quarters of a mile from the coast of Glamorganshire, at a spot never left dry by the tide, but within a quarter of a mile from the land which is left dry by the tide. The place in question was between Glamorganshire and the Flat Holms, an island treated as part of the County of Glamorgan, the ship being at the time 2 miles from the island on the inside and about 10 miles from the opposite shore of Somerset. It was held that the part of the sea where the vessel was at the time was within the County of Glamorgan. No one could quarrel with the actual decision in this case, since the vessel was considerably higher up the Bristol Channel, where the width of the channel was not much more than about 10 miles, and further, since the vessel was between an island which was part of the port of Cardiff and the Welsh shore, and was itself within 3 miles of the Welsh shore. In delivering the judgment of the court, however, COCKBURN, C.J., said: "The fact of the Holms, between which and the shore of the County of Glamorgan the place in question is situated, having always been treated as part of the parish of Cardiff and as part of the County of Glamorgan, is a strong illustration of the principle on which we proceed, namely, that the whole of this inland sea between the Counties of Somerset and Glamorgan is to be considered as within the counties by the shores of which its several parts are respectively bounded."

From these *dicta*, therefore, it would seem that the court was of opinion in *Cunningham's Case* that the whole of the Bristol Channel was *intra fauces terræ*, and therefore constituted territorial waters.

The next case to which reference should be made is the *Conception Bay Case—Direct United States Cable Co. Ltd.* v. *Anglo-American Telegraph Co. Ltd.*, 1871, 2 A.C. 394.

In this case the appellants had laid a telegraph cable to a buoy more than 30 miles within Conception Bay, which lies between two promontories more than 20 miles distant from each other. The average width of the bay being 15 miles, and the distance of the head of the bay from the two promontories being respectively 40 and 50 miles. The spot in question, where the buoy was situated, was more than 3 miles from the shore of the bay. The Privy Council held that the Imperial Legislature asserted exclusive dominion over the bay and that it had conferred upon the Legislature of Newfoundland the right to legislate with regard to it, and an injunction was granted to the respondent to prevent the appellants from infringing certain exclusive rights, granted to the appellants by the Newfoundland Legislature.

This decision, it is true, may be regarded as one turning on the construction of certain Acts of Parliament, but it goes nevertheless to show that this country has asserted sovereignty over inland bays, quite irrespective of the 3 miles principle.

Cunningham's Case was referred to in the *Conception Bay Case*, and Lord BLACKBURN considered the former to have determined the following points, viz.:—

"(1) That a place in the sea out of any river, and where the sea was more than 10 miles wide, was within the County of Glamorgan and consequently, in every sense of the words, within the territory of Great Britain"; and

"(2) That usage and the manner in which that portion of the sea had been treated as being part of the county was material." (2 A.C., at p. 419.)

It is submitted from a consideration of the above cases that a point in an inland sea, even where it is more than 6 miles wide, may be within territorial waters, notwithstanding that the point in question is more than 3 miles distant from the land, but that whether this is so or not will depend upon usage, and the manner in which that part of the inland sea has been treated by the country, whose shores are bounded thereby.

The Court of Appeal in the "*Fagernes*," considered that the *dicta* in *Cunningham's Case* were not to be regarded as being to the effect that all parts of the Bristol Channel constituted territorial waters, and in reversing the decision delivered by Mr. Justice HILL, they appear to have followed the second principle (with regard to usage and claims to territorial sovereignty) referred to above, since the court invited the Attorney-General to appear, and acted upon his statement—which, however, they were careful to observe, was by no means conclusive—that the Crown did not claim territorial jurisdiction over that part of the Bristol Channel where the collision occurred. The decision of the Court of Appeal in the "Fagernes" must, therefore, be regarded as having decided merely that that part of the Bristol Channel where the collision occurred was not within territorial waters. It is no authority for the proposition that the 3-mile limit applies to inland seas and bays just in the same way as it does to marginal seas. Indeed, the practice of other nations, such as France, Germany and the decision of the Privy Council itself in the *Conception Bay Case*, it is submitted, sufficiently prove that that principle cannot be rigidly applied, even if it can be at all, to inland bays, gulfs, straits and estuaries.

A Railway Company's Responsibility for Hand Luggage.

IN *Vosper* v. *G.W.R. Co.*, 71 SOL. J. p. 605, which was before the somewhat unusual tribunal of two Lord Justices (ATKIN and LAWRENCE, L.JJ.), sitting as additional judges of the King's Bench Division and as a Divisional Court, a point of great importance to railway companies and their passengers was decided. The company had appealed from a decision of His Honour Judge SCULLY, in the following circumstances: At 9.45 on a Monday morning the plaintiff gave his suitcase to a porter, at Exeter station, to put in the cloak-room, and then to have it ready for him when he came to catch the 1.45. There was some dispute as to the facts after the plaintiff arrived at the station at 1.30, but Judge SCULLY held that the plaintiff had agreed with the porter that the latter should place the suitcase in a first-class compartment, and that was done. The carriage in which the suitcase was placed was awaiting to be attached to the express from Plymouth to London. When the express arrived, however, the plaintiff (who had a third-class ticket) found some friends on it, and joined them, subsequently going to the restaurant car with them. The suitcase was lost, and the plaintiff sued the company for the damage. Judge SCULLY decided in his favour, on the ground that the onus was on the company to show that the plaintiff had not taken reasonable care of his hand luggage, and they had not discharged it. The Divisional Court dismissed the appeal. In effect, they ruled that it was not the duty of a passenger, even having assumed control of his hand luggage, to continue to guard it during the whole journey, having regard to the fact (as pointed out in the judgment of ATKIN, L.J.) that a railway company now invited passengers to change their carriages and go to another part of the train to take meals. In such circumstances it is certainly unusual for a passenger to take all his hand luggage with him to the restaurant car, and, in fact, it would be extremely inconvenient to the company and the other passengers if he did so. The judges had some little difficulty as to the first-class carriage, but the passenger might have had the intention of paying the excess fare, "and certainly it could not be said that a third-class passenger was an outlaw when he travelled first-class." The judgment of Lord WATSON in *G.W.R.* v. *Bunch*, 1888, 13 A.C. 31, was considered and explained.

The decision as it stands certainly throws a heavy responsibility on the companies, who appear from it not only to be liable for hand luggage placed in a train with the passenger, after, at their invitation, he has left it to take a meal in a restaurant car, perhaps, several coaches away, but for all luggage placed in a train at a passenger's request, unless he is in actual custody of it, whether they have invited him to absent himself or otherwise. In fact, it was suggested in the judgment that the company would be liable if the passenger left his luggage unguarded when he changed his compartment for his own purposes, as for joining friends, or to smoke. The decision can hardly be reconciled with *Bergheim* v. *G.E.R.*, 1878, 3 C.P.D., 221, but perhaps the latter may be regarded as over-ruled by *G.W.R.* v. *Bunch, supra*. Leave to take the case further has now been refused. It seems, therefore, that railway companies should forbid their servants to place hand luggage in a compartment unless the passenger is present, and it is delivered into his possession, and should also require a passenger changing his compartment to notify the fact if he leaves his luggage behind. On this judgment the liability of the companies appears to be somewhat unfairly wide.

A Conveyancer's Diary.

Grants of Representation to Trustees of the Settlement under S.L.A., 1925, s. 30 (3).

In reviewing the recently published work of Messrs. Hart and Willan on Settled Land Grants, it was pointed out (see p. 581, *ante*) that "the ruling of the registrars as to the position of a settlor's personal representatives who, under S.L.A., 1925, s. 30 (3), become Settled Land Act trustees of the settlement, appears open to considerable doubt."

This ruling is referred to by the learned authors on p. 16 in the following words:—

> "Notwithstanding the fact that, under s. 30 (3) of the Settled Land Act, 1925, . . . the personal representatives of the settlor are appointed temporary trustees, the registrars hold that they have only an equal right to a grant with the personal representatives of the tenant for life, and a grant is made to the first claimants unless a registrar directs otherwise. . . . The registrars refuse to admit that such appointment of temporary trustees constitutes an appointment of 'special executors' within the meaning of the Administration of Estates Act, 1925."

In the first place, it is perfectly clear that it is necessary to apply for a grant of probate or administration in respect of land settled previously to the death of the deceased and in respect of which the deceased was trustee estate owner.

Secondly, it is provided by Ad. of E.A., 1925, s. 22, that a testator may appoint, and in default of such express appointment, shall be deemed to have appointed, as his special executors in regard to settled land, the persons (if any) who are at his death the trustees of the settlement thereof. And by Jud. A., 1925, s. 162 (1), it is enacted that where the deceased died wholly intestate as to his estate, administration *shall* in regard to land settled previously to the death of the deceased, be granted to the trustees, if any, of the settlement, if willing to act.

Hence it is also clear that the persons who have *first* claim to a grant of representation are the S.L.A. trustees of the settlement.

The two things in the registrars' ruling which we entirely fail to appreciate are:—

(1) Their refusal to admit that S.L.A. trustees under S.L.A., 1925, s. 30 (3), are S.L.A. trustees for the purposes of the Jud. A. and Ad. of E.A., 1925.

It is to be observed that the expression "trustees of the settlement" is defined in these Acts by reference to the S.L.A.

The words used in s. 30 (3) offer no ground whatever for this refusal. The material part of the sub-section is as follows:—

> "Where a settlement is created by will, or a settlement has arisen by the effect of an intestacy, and apart from this sub-section there would be no trustee for the purposes of this Act of such settlement, then the personal representatives of the deceased shall until other trustees are appointed be by virtue of this Act the trustees of the settlement . . ."

There is no suggestion made of any limitation on the powers of such trustees or that their position is in any way different from that of S.L.A. trustees under sub-s. (1) of the same section. They are for all purposes in exactly the same position as other S.L.A. trustees. The fact that they are trustees of the settlement "until other trustees are appointed" is altogether beside the point in this connexion. Their temporary character does not prejudice their exercise of any of the rights and powers as trustees of the settlement. After all, a trusteeship, in all cases, is only a temporary office.

Further, the section actually makes such personal representatives trustees of the settlement. It does not enact merely that such persons "shall be deemed" to be trustees of the settlement; and it goes much further than s. 18 of the T.A., 1925, which only *enables* personal representatives of a sole or surviving trustee, until the appointment of new trustees, to exercise or perform any power or trust vested in such deceased trustee.

(2) If the trustees under s. 30 (3) are not trustees of the settlement, what right have they to a grant of administration at all? And in particular, by what reasoning are they given an *equal* right to a grant with the general representatives?

Our submission is that the trustees of the settlement under s. 30 (3) have first claim to a grant of representation, and that only when they have renounced or otherwise signified their unwillingness to act, does the right of the general representatives to a grant arise.

Grant of Administration to Sole Executrix where a Minor is interested.

In *re James White*, 71 Sol. J., p. 603, the Court of Appeal decided that the court has no authority, where it knows that a minor is interested under the will or intestacy, to make a grant of administration to a sole representative who is interested in the estate of the deceased or the proceeds of sale thereof. Further, they expressed the view that the Court has no power to grant sole administration to any person not being a trust corporation where there is a minority or a life interest. Section 160 of the Jud. A., 1925, enacts (amongst other things) that "administration shall, if there is a minority, or if a life interest arises under the will or intestacy, be granted either to a trust corporation, with or without an individual, or to not less than two individuals."

The provisions of this section which was first enacted in the Ad. of E.A., 1925, s. 12, are definite enough upon the whole question. But it was argued that a certain amount of discretion was given to the court in certain circumstances by the operation of the following provisions of s. 162 of the Jud. A., 1925:

> "In granting administration the High Court shall have regard to the rights of all persons interested in the estate of the deceased person, or the proceeds of sale thereof . . . and any such administration may be limited in any way the Court thinks fit:
>
> "Provided that where the deceased died wholly intestate as to his estate administration shall—
>
> "(*a*) unless by reason of the insolvency of the estate, or other special circumstances, the Court thinks it expedient to grant administration to some other person, be granted to some one or more of the persons interested in the residuary estate of the deceased, if they make an application for the purpose."

The basis of this argument was that the words "to some other person" indicated that the court, notwithstanding the

express provisions of s. 160, had a discretion exercisable where it was "expedient" to grant administration to one person where an infant was interested under a will or intestacy.

The Court of Appeal refused to take this view, although all the counsel in the case agreed that a grant to a sole representative would be practically convenient to the case. The word "other" in the phrase "some other person" referred to the persons interested in the deceased's estate, and therefore clearly excluded the widow in this case. Again, s. 162, although it replaces the wide discretion formerly given to the court by s. 73 of the Court of Probate Act, 1857, cannot be taken to limit the application of a prohibition so definite and emphatic as that contained in s. 160. It is extremely useful to have an indication of the views of the Court of Appeal upon the general question. Though only given *obiter*, it will, no doubt, be generally treated as authoritative-

It is well to bear in mind that s. 160 only applies to the grant of *administration* in the two circumstances mentioned, and that *probate* may still be granted to a sole executor not being a trust corporation where there is a minority or a life interest.

Landlord and Tenant Notebook.

Assessment to Income Tax of Premises Let in Tenements.

Mr. Justice Rowlatt recently delivered an important judgment dealing with the method of assessment, for the purposes of Schedule A, of premises, which are divided into flats or tenements, each of which is let separately to a separate tenant: *Williams* v. *Sanders*, 43 T.L.R. 663.

The premises, the assessment of which was in question in that case, consisted of a house or building owned and let by the appellant in four different apartments or tenements under separate weekly tenancies, each terminable upon one week's notice by the landlord or the tenant.

The rent of the tenements was respectively 10s. 6d., 7s., 3s. 9d., and 6s. per week, making a weekly aggregate of 27s. 3d., and an annual aggregate of £70 17s., and the landlord paid rates and taxes. All the above rents were paid by agreements commencing within seven years preceding the 5th April next before the time of making the assessment in question.

The Crown contended that for the purpose of determining the annual value of the premises, the sum total of these rentals had to be taken as the basis of assessment, but the appellant argued that the sum total of the above rentals was only a factor to be considered in determining the annual value, and was not to be made the basis of the assessment, and that such basis would be the rents which a *single* intending tenant *by the year* of the whole of the premises would pay having regard to what he was able to obtain from actual or hypothetical sub-tenants and to the profit which he would expect to derive therefrom, and having in consequence regard to the possibility of some portion or portions of the premises remaining vacant and on the tenant's hands for some portion of time during each year.

The Commissioners did not accept the contentions of either the Crown or the appellant in their entirety. They inclined, however, to a large extent to the view taken by the Crown, namely, that the sum total of the actual rents paid by the four sub-tenants had to be aggregated and taken as the basis of the assessment, subject to one qualification, however, that from that total (£70 17s.) had to be deducted a contingency balance, which they fixed as one-twenty-sixth of the net rents. (From the above sum the amount of the rates would of course have to be deducted, and there was no dispute as to this.)

Now the general rule for estimating the annual value (Rule 1 of No. I of the rule applicable to Schedule A) provides that the annual value shall be "The amount of the rent by the year at which the premises are let, if they are let at a rack rent and the amount of that rent has been fixed by agreement commencing within the period of seven years preceding the 5th April next before the time of making the assessment"; and r. 2 provides that if the premises are not let at a rack rent so fixed, then the annual value shall be "The rack rent at which they are worth to be let by the year."

Where, however, premises are let in apartments or tenements, special provisions are applicable. The material rule is r. 8 (*c*) of No. VII of the rules applicable to Schedule A, and that rule provides as follows: "The assessment and charge shall be made *upon the landlord* in respect of—(*c*) any house or building let in different apartments or tenements and occupied by two or more persons severally. Any such house or building shall be *assessed and charged as one entire house or tenement*."

At first sight it would appear that the above rule is open to the construction, that when a house is let in apartments or tenements, one is not to take as the basis of assessment the aggregate of the actual rents paid by the various sub-tenants, but the rent which a hypothetical tenant would pay for the *whole* house.

When one considers this rule more carefully and pays regard to the fact that it is placed under No. VII of the rules applicable to Schedule A, which purports to deal, as the heading indicates, with the question of the persons chargeable, r. 8 appears in quite a different light.

It will be observed that r. 1 of No. VII provides that "Save as in this Act provided in any particular case, tax under this schedule shall be charged on and paid by the *occupier* for the time being." If r. 8 is contrasted with r. 1, the former appears to be merely an exception to the latter, providing that in the case of a house let in different apartments or tenements, it is the *landlord* and not the occupier who is chargeable.

When viewed in that light, therefore, r. 8 merely amounts to this, viz., that the landlord and not the occupier is to be chargeable, and that he is not to be charged separately for each tenement or apartment but for all of them in the aggregate. Rule 8, it is submitted, therefore, has nothing to do with the basis of the assessment, that being a matter to which No. I of the general rule applies.

Purpose of No. VII, r. 8 of Rules applicable to Schedule A.

This was the view taken by Rowlatt, J., in *Williams* v. *Sanders*. "The purpose of this rule [r. 8 of No. VII]," said the learned judge, "is to make it clear that the tax in respect of these houses is to be charged on the *landlord*, and not on the occupiers under the *primâ facie* rule laid down by No. VII, r. 1, and the whole group is headed 'Rules as to persons chargeable.' Therefore, what we find here is a direction that the assessment to income tax in respect of these premises shall be charged upon the landlord, and the words 'as one entire house or tenement' mean that there is to be one charge upon the landlord, and I do not think for a moment that they let in a speculation as to a middleman at all. What the house is worth to be let at a rack rent is the sum of the rack rents you can get for the house, and I do not see that it is any the less so because you get it piecemeal; and it is not necessary in order to give effect to the purpose of this rule, which as I have already pointed out, is to make the landlord assessable in one entire assessment, to introduce an alteration in the principle of valuation."

This view would also appear to be in accordance with the decision of the Court of Appeal in *A.-G.* v. *Mutual Tontine Westminster Chambers Assc.*, 1876, 1 Ex.D.469, where the Court of Appeal held that for the purposes of inhabited house duty the value of each of seven blocks of a building that was divided up into several self-contained suites was properly represented

by the aggregate sum of the values of each separate suite as appearing in the valuation list, notwithstanding that, owing to some of the suites not being let and then producing no rent, the aggregate in question did not represent the actual annual value of the blocks to the landlord.

While Mr. Justice Rowlatt agreed with the Commissioners in the holding that the aggregate rental of the various tenements had to be taken as the basis of the assessment, he differed with them in one respect, i.e., with regard to the deduction from this aggregate of the balance which the Commissioners had allowed for contingencies, the learned judge being of opinion that there was no authority for the making of this allowance or deduction.

Correspondence.

"Early Holborn and the Legal Quarter of London."

Sir,—In your current issue and in his review of my book upon "Early Holborn and the Legal Quarter of London," Mr. Bruce Williamson has made, inadvertently no doubt, an unlucky slip, mischievous in its possible misunderstandings, and therefore requiring correction. He says that the Society of Lincoln's Inn will "be sorry to learn" from this book "that their true genesis must be sought in the house of Fetter Lane" of a humble individual, Thomas de Lincoln, a pleader in the City Court of Hastings. Your reviewer probably had in his mind the houses of the second Lincoln's Inn occupying land east and south of Staple Inn, once owned by that same influential and wealthy official. In my book, however, I have stated in sub-s. 1527 that Ralph de Neville, the accomplished and capable Chancellor of Henry III's early regnal years, was "the true founder of the houses of Lincoln's Inn," and a statement which your reviewer should have credited me with. Neville's clerks of the Chancery were in occupation there in 1226.

The Society of Lincoln's Inn has no cause "to be sorry to learn" the true history of their Inn supplied by my abstracts of contemporary deeds; in due time they will most assuredly be glad to discard erroneous tradition, realising greater satisfaction in a history even older, more honourable and more interesting than that of the Inn of Henry de Lacy, Earl of Lincoln, in Shoe-lane, bought by him in 1286.

9th July, 1927. E. Williams.

Sir,—I am unable to see any "slip" in my review of "Early Holborn and the Legal Quarter of London" which appeared in your issue of 9th July. I there correctly indicated the author's view, that the present Society of Lincoln's Inn cannot claim descent from Henry de Lacy, the renowned Earl of Lincoln. I think he has supplied good grounds for this conclusion. I did not allude to the solatium he offers that Society, in a descent from Ralph de Neville, the Chancellor Bishop of Henry III, for I think here the reasons he adduces are unconvincing. I regret that this particular omission has caused him annoyance; but in reviewing a book containing more than 1,800 sections, much must inevitably be left out, which the author may consider specially worthy of notice. May I point out that I did not describe the Serjeant Pleader Thomas de Lincoln, founder of the second Society known as Lincoln's Inn, as "humble," but as "a humbler individual" than Henry de Lacy the Earl. I notice also that the word "Hustings" has inadvertently been printed "Hastings."

I cordially agree that truth should be the objective of all historical research, and frankly accepted when discovered, however destructive it may prove to cherished suppositions, but inferences drawn by enthusiasm from insufficient data may serve only to darken and conceal it.

13th July, 1927. J. Bruce Williamson.

Legal Confiscation of Property: The Housing Act, 1925.

Sir,—Your note to the letter from "A London Solicitor" under the above title in your issue of the 16th inst. deals inadequately with the present position of the legislation referred to. The objections to s. 46 of the consolidating Housing Act, 1925 (a re-enactment of a previous section) are, *inter alia*, as follows:—

(1) It provides that insanitary property may be taken without payment. This principle, of which you apparently approve, is contrary to the principles which have hitherto prevailed in this country. It cannot be denied, however, that the owner of an insanitary property is presumably not a meritorious subject.

(2) But are you aware that the local authorities, including the London County Council, construe the word "insanitary" as including properties which, although themselves sanitary, are surrounded by insanitary properties? Thus, an owner of a property in a slum area who has expended money to bring his property into a good condition may have it taken from him without payment merely because his neighbours have not done the same. It is hard to believe that any local authority would take this view, but there is no doubt that they do.

(3) The question whether a property is sanitary or insanitary is decided by the decision of the Ministry of Health, from which there is no appeal. If I correctly understand Magna Charta, it has hitherto, since the date of that Charter, been understood that a man's property may not be taken away from him by the executive.

(4) The present Ministry of Health has admitted that the section should be altered having regard to the above considerations, but when asked to introduce amending legislation they replied that they will do so when a proper opportunity arrives. This we may hope for on the Greek Kalends.

London, E.C.2. Another London Solicitor.
18th July.

["A London Solicitor" did not raise this interesting point. We agree that the owner of a house which is rendered insanitary solely by the presence around it of insanitary property (as to which see *Hall* v. *Manchester Corporation*, 1915, H.L. 79 J.P. 385) should not be paid merely the site value of his house. That is obviously inequitable. But it appears possible to contend that such a house is included in the scheme "only for the purpose of making the scheme efficient" within the exception in s. 46 (see reference to "Eminent Counsel's" advice in 89 J.P. Journal, at p. 559, col. iii, bottom). If that contention is unsound, an amendment should most certainly be enacted without delay. In any case an amendment is desirable in order to clear up the position.—Ed., *Sol. J.*]

Civil Liabilities arising from Crime.

Sir,—You have been good enough to show me the letter from Mr. F. G. Robinson with regard to my lecture on this subject which appeared in your last issue.

While I agree that my remark is subject to the qualification mentioned, that qualification is in fact less wide than appears from the extract quoted by Mr. Robinson from s. 45 of the Offences Against the Person Act, 1861. That section refers only to cases dealt with summarily by justices under a complaint made in most cases by or on behalf of the party aggrieved, and s. 46 prohibits justices from dealing summarily with such complaints unless they are satisfied that the circumstances are not sufficiently serious to warrant them in committing the case for trial. Moreover, where they deal with the case under the Probation of Offenders Act, the justices may themselves award to the complainant damages and costs.

1, Temple-gardens, Temple, E.C. A. S. Comyns Carr.
18th July.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4, be typewritten on one side of paper only, and be in triplicate. Each copy to contain the name and address of the subscriber. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

MORTGAGE OF LEASEHOLDS BEFORE 1882—TERM LESS DAY —SALE BY MORTGAGEE—TITLE.

866. *Q.* In 1876 A mortgaged leasehold property to B for a term of ninety-nine years (less the last day thereof), and in such mortgage deed there was no declaration of trust in favour of the mortgagee as to the last day. B subsequently sold the premises as mortgagee, and there have been many intermediate assignments of the term of ninety-nine years, less the last day. We are now acting for the vendor and purchaser in a proposed sale of the property.

(*a*) In our opinion the vendor can only sell for the term of ninety-nine years, less the last day thereof. Is this so?

(*b*) Is there any provision in the L.P.A., 1925, by virtue of which the legal estate, in such outstanding day, is automatically (or otherwise) vested in the present vendor?

A. (*a*) The questioner is referred to *re Solomon and Meagher's Contract*, 1889, 40 C.D. 508, and to the answers to *QQ.* 730 and 736, pp. 265 and 289, *ante*, from which he will see that the mortgagees could have conveyed the full term on sale by them. If they did so, the vendor can sell accordingly.

(*b*) If they did not do so, the new legislation does not divest the original mortgagor of the last day, though perhaps, the L.P.A., 1925, s. 89 (3), may be prayed in aid if the mortgagor is statute barred.

TRUST FOR SALE—TRUSTEE BUYING OUT OTHER BENEFICIARIES —TITLE.

867. *Q.* A, by her will, appointed her son, X, and daughter, Y, as executors, and gave and bequeathed her two leasehold dwelling-houses, comprising practically all her estate, to all her nine children named in the will, or such of them as should be living at her decease, in equal parts, share and share alike, the children of any deceased child taking their parent's share. The will then proceeds "I direct that the houses shall be sold by public auction as soon after my decease as convenient." A died in February, 1927, and the will was proved by Y, the surviving executrix, the other executor X, having predeceased the testatrix, leaving three children him surviving and now all of age. It has been agreed between all the children and grandchildren that the executrix Y, shall purchase one of the houses, and another daughter the other house.

(*a*) What is the best way of giving a title in view of the direction contained in the will as to a sale by auction? It should be noted there is no express trust for sale, and the direction is not addressed to the executors.

(*b*) Will it be sufficient if Y executes a vesting assent in favour of all the beneficiaries under the will, the first four of whom will then convey to each purchaser under the statutory trusts?

A. The leaseholds vesting in the executors as such, the opinion here given is that the direction to sell, without saying by whom, is *prima facie* a direction to the executors, see *Sissons* v. *Chichester-Constable*, 1916, 2 Ch. 75, and cases cited. This opinion must, however, be given with the usual reservation when the whole will is not seen. But, even if the sale is to be by her, the executrix cannot sell to herself. In the circumstances a possible course would be for her to buy up the equitable interests of all the other beneficiaries in the house it is desired she should take, when she would be trustee for sale and sole beneficiary, a situation fully dealt with in the answer to *Q.* 244, p. 541, Vol. 70. Similarly, the other daughter can buy up the equitable interests in the remaining house, and then claim conveyance from Y.

SETTLED LAND—DEATH OF TENANT FOR LIFE—SPECIAL REPRESENTATION—TITLE.

868. *Q.* P, who died in 1903, by her will, left certain freehold property to her trustee R, upon trust to permit Mr. and Mrs. B to have the use and enjoyment thereof during their joint lives, and upon the death of the survivor, the said property was to fall into residue and was devised to R. R died in 1918, and by her will she gave, devised and bequeathed all her estate to her daughter L. Mr. B died some time ago—Mrs. B has recently died, and L has entered into a contract to sell the leasehold property. We are acting for the purchaser.

(*a*) Can L, as the personal representative of P (by devolution) and as trustee of the settled land, assent to the vesting of the property in herself, and then convey as beneficial owner?

(*b*) If not, how should the conveyance be effected?

(*c*) Will it be necessary before such deed is effected for L to take out a grant of administration to the estate of Mrs. B, limited to the settled land?

(*d*) In this event, should L appoint an additional trustee?

A. (*a*) No. Assuming that Mrs. B died since 31st December, 1925, the legal estate had vested in her by virtue of the L.P.A., 1925, 1st Sched., Pt. II, paras. 3 and 6 (*c*), and, if she also died intestate, as is inferred from *Q.* (*c*), it is vested in the probate judge under the A.E.A., 1925, s. 9, until special representation is granted under the J.A., 1925, s. 162.

(*b*), (*c*) and (*d*). If L is the personal representative of P, and was so before the death of Mrs. B, she is the trustee of the settlement for the purpose of the S.L.A., 1925, see s. 30 (3). She ought to have appointed a co-trustee under that subsection, but, since the settlement exists no longer, probably she has now no power to do so. She may, therefore, apply alone for the special grant, and, when she has obtained it, she will have the legal estate vested in herself as trustee for herself, a situation fully dealt with in the answer to *Q.* 244, p. 541, vol. 70. In such circumstances the purchaser may with safety accept a conveyance from her as beneficial owner without further formality, but should require proof of the payment of all death duties arising on the death of Mrs. B and R, and, if Mr. B died less than twelve years ago, on his death also.

PARTNERS—LEASEHOLDS—CONVEYED TO PARTNERS "AS JOINT TENANTS AND AS PART OF THEIR PARTNERSHIP PROPERTY."

869 *Q.* In 1921 leasehold property was assigned to seven partners for the residue of a term of 999 years, created by the lease "as joint tenants and as part of their partnership property." The partners then mortgaged the property to a mortgagee by sub-demise. Before 1926 two of the partners had been paid out and retired from the partnership, but no assignment of their shares has been executed. Both of these are still available. The remaining five partners now wish to repay the existing mortgage and re-mortgage the property.

(1) In whom did the property vest under the L.P.A., 1925?

(2) Is it necessary or advisable for an assignment to be executed by the old set of partners in favour of the existing partners?

(3) If so, by whom would the assignment have to be executed having regard to the fact that the old partners were

immediately before the commencement of the Act, neither holding as beneficial joint tenants nor in undivided shares ?

(4) It is presumed that the assignment would have to be in favour of four of the existing partners as joint tenants upon the statutory trusts subject to the existing mortgage.

(5) Is it now advisable in such assignment to state that the property is to be held as " part of the partnership property," or is it better to omit this, having regard to the trust for sale ?

(6) What would the stamp duty be on such assignment ?

(7) On repayment of the existing mortgage, the surrender would presumably have to be in favour of the same four partners ?

(8) In what capacity should the four partners re-mortgage the property and, if it is necessary to bring their beneficial interest on the title for this purpose, should the fifth partner also join and demise the property to the mortgagee ?

A. (1) Partners *prima facie* take in equity as tenants in common, see authorities cited in the answers to *QQ.* 740 and 762, pp. 304, 348 *ante.* However, having regard to the habendum in this case, they may have taken as joint tenants, in equity and also in law. But, whether they did so or not, the joint tenancy in equity was severed by the retirement of the two partners, and the seven original partners then held the legal estate as trustees for the five continuing partners. These estates, not being equal and co-extensive, there was no merger as in *re Selous*, 1901, 1 Ch. 921, and the L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (1), operated to give the seven trustees a trust for sale (their number, it is to be observed, not being reduced either by this statute or by the T.A., 1925, s. 34).

(2) It would probably be more convenient if the former partners retired from the trust, see T.A., 1925, ss. 39 and 40 (2) (*b*).

(3) Having regard to s. 39, *supra*, all the seven original partners should execute such a deed.

(4) The five partners can continue as trustees, or four, if deemed more convenient. They hold on trust for sale, with the large powers of postponement, etc., contained in the L.P.A., 1925, ss. 23-29.

(5) Possibly a purchaser would not now be concerned with the trusts, but it still seems the better conveyancing to keep them off the title.

(6) The stamp duty on an appointment of new trustees is 10s., and in practice the implied vesting declaration is not charged extra.

(7) For merger of the sub-term it should be in favour of the trustees for sale for the time being, see L.P.A., 1925, s. 115 (1).

(8) The opinion has often been given in these columns, and is shared by the editors of the various collections of precedents, that trustees for sale have an inherent power to mortgage, see, for example, answer to *QQ.* 170 and 242, pp. 420 and 541, vol. 70.

WILL—SOLE PERSONAL REPRESENTATIVE AND BENEFICIARY—DEATH AFTER 1925—ASSENT—TITLE.

870. *Q.* A, by his will, dated the 24th March, 1921, devised and bequeathed all his estate and effects, real and personal, to his wife, B, absolutely, and appointed her sole executrix. A died on the 18th August, 1926, and the will was proved on the 4th November, 1926. *Inter alia*, A's estate consisted of one leasehold house. Is it necessary for an assent to be executed by B in favour of herself and an endorsement thereof made upon the probate ? It would seem a useless formality.

A. B can give title as executrix if she pleases, without assenting to the bequest to herself. But if she makes assent, it need be by writing only, and no stamp is required, see A.E.A., 1925, s. 36 (4) and (11), so a minimum of trouble and expense is involved.

LOCAL AUTHORITY—RECREATION GROUND—COVENANT NOT TO USE FOR GAMES ON SUNDAY—ENFORCEABILITY.

871. *Q.* A local authority (urban district council) some few years ago purchased a piece of land for the purpose of a recreation ground, and the conveyance contained a covenant by the council with the vendor that such land should not at any time be used for organised games on Sundays. As the vendor is dead and there is little risk of his representatives seeking to enforce such covenant, the council are now thinking of authorising and allowing Sunday games. Should they do so, is any ratepayer who objects to Sunday games in a position to take proceedings in the matter in order to enforce the covenant against the council, and, if so, what would be the nature of the proceedings and the general method of procedure ? I may say that there appears to be a general local opinion that a ratepayer can do so, but I can find no authority on the point.

A. It does not appear from the question whether the vendor retained adjacent land, which might possibly benefit in quietude, etc., from the covenant. If so, the benefit of the restriction may run with such land in the usual way, and the council may thus be bound. If not, there is express authority that the burden of such a covenant does not run with the land: see *L.C.C.* v. *Allen*, 1914, 3 K.B. 642. Here, however, the council are still in possession, and *prima facie* are bound by their own covenant. It is suggested, however, that if the vendor's personal representatives do not retain adjacent land, they would have extreme difficulty in proving damage for breach of such covenant, and no injunction would be granted in the circumstances. A ratepayer as such would have no *locus standi* in enforcing it.

SALE BY PERSONAL REPRESENTATIVES AFTER TEN YEARS—TITLE.

872. *Q.* In 1917 A died seised of freehold property. By his will, which was proved in 1918, he appointed his wife and B and C his executors and trustees, and after certain legacies he devised and bequeathed the rest of his real and personal property to his trustees, upon trust to sell, call in and convert, and out of rents and profits to pay certain annuities to his wife and sister and son, and he bequeathed the residuary trust funds to his son absolutely, the trustees to have power to postpone sale as long as they thought fit. The wife died in 1926 leaving B surviving. B is now selling some of the freehold property as " surviving personal representative " of A. Should not another trustee be appointed to receive the purchase-money ? Can B sell as personal representative ? It would appear that the function of personal representative has been performed and that B is now a trustee for sale.

A. The opinion is here given that the purchaser should make a requisition as to payment of the annuities, as a " reasonable inquiry " under the L.P.A., 1925, s. 199 (1) (ii) (*a*). If it appears, as it probably will, that any annuity has been paid, assent to the devise on trust must be inferred within *Wise* v. *Whitburn*, 1924, 1 Ch. 460, and a second trustee must be appointed to give receipt. Should B sell as personal representative, however, a purchaser in a position to accept title on the faith of a recital negativing assent would have the protection accorded by the A.E.A., 1925, s. 36 (6).

COPYHOLD—DEATH OF TENANT INTESTATE BEFORE 1926—INFANT HEIR—WIDOW ADMINISTRATRIX—NEW TRUSTEE—TITLE.

873. *Q.* A died 7th February, 1923, intestate seised of freehold and copyhold land, leaving B, his widow, and infant children. Letters of administration to his estate were granted to B on the 24th April, 1923. The youngest son was the customary heir to the copyhold land. By a deed dated 28th April, 1926, B appointed herself a C to be trustees of the settlement, upon such trusts as might be requisite for giving effect to the right of the infant customary heir, and declared that the land formerly copyhold should vest in

herself and C, but without prejudice to the provisions of s. 40 (3) of the T.A., 1925. Are B and C now in a position to convey the land formerly copyhold to a purchaser? Is any vesting deed or vesting assent necessary to vest the property in B and C, or is the vesting declaration contained in the appointment of trustees sufficient?

A. Some relevant data are not given, i.e., who was tenant on the rolls on 31st December, 1925, and the custom as to dower or freebench? Assuming, however, that A was tenant on the rolls, and that the widow's interest did not extend to the whole income of the land, then, applying the L.P.A., 1922, 12th Sched., para. 8, prov. (iii) (subject to the doubt discussed in the answer to *Q.* 196, p. 461, vol. 70), the copyholds vested as freeholds on 1st January, 1926, in B. They were deemed to be settled land under the S.L.A., 1925, s. 1 (1) (ii) (*d*), and (2), and B rightly appointed C as co-trustee with herself under s. 30 (3). The appointment sufficed to vest the legal estate in B and C, but they should, notwithstanding, execute a principal vesting deed in accordance with s. 5, see 2nd Sched., para. 3 (4) and s. 13. When they have done this, they can convey to a purchaser under ss. 26 and 38.

MORTGAGE BY WAY OF LEGAL CHARGE—L.P.A., 1925. s. 87 —RELEASE ON CONVEYANCE TO PURCHASER.

874. *Q.* Can a mortgagee by legal charge be joined in an assignment to a purchaser of leasehold property? We can find no precedent either in "Prideaux" or in the "Encyclopædia of Forms," where a mortgagee by legal charge can be joined in an assignment. The precedents only refer to the case where the mortgage was by way of demise. Does a legal charge give the mortgagee a legal estate or only an equitable estate? L.P.A., 1925, s. 1, states that only two legal estates in land will be recognised:—

(1) An estate in fee simple absolute in possession.

(2) A term of years absolute.

Sub-section (4) of s. 1 goes on to say, that certain interests created as legal interests are called in the Act "Legal Estates" (*inter alia*, a charge by way of legal mortgage). Section 87, L.P.A., 1925, explains the effect of a charge by deed expressed to be by way of legal mortgage in effect, stating that the mortgagee is to have the same protection, etc., as if the mortgage had been by demise. If a mortgagee by legal charge cannot be joined in the assignment to the purchaser, then it is submitted that there must be in the first instance, a receipt endorsed under s. 115, and an assignment direct between the vendor and purchaser. The answer may clear up what has been a mystification to us, namely, that under a covenant in a lease to produce and register assignments with the ground landlord's solicitors, that the Council of the Law Society has held that, in their opinion, a mortgage by way of legal charge is not registrable under such a covenant.

A. The questioners will find a precedent, "K. & E." 12th ed., vol. I, Pt. I, p. 541. If also they will refer to the answer to *Q.* 444, p. 927, vol. 70, they will see that the opinion given by the Council of the Law Society in respect of the covenant for registration has been adopted in these columns, and the reasoning in *Gentle* v. *Faulkner*, 1900, 2 Q.B. 267, quoted as authority. A mortgagee, by way of legal charge, can also re-convey or discharge his security under the L.P.A., 1925, s. 115 (1) (*b*). Such a charge should appear (at least if not released) in an abstract of title as a matter of course, and might be described as a sort of floating legal estate.

The attention of the Legal Profession is called to the fact that the PHŒNIX ASSURANCE COMPANY Ltd., Phœnix House, King William Street, London, E.C.4 (transacting ALL CLASSES OF INSURANCE BUSINESS), invites proposals for Fidelity Guarantee and Court Bonds, Loans on Reversions and Life Interests. Branch Offices at Byron House, 7, St. James's Street, S.W.1; 187, Fleet Street, E.C.4; 20-22, Lincoln's Inn Fields, W.C.2; and throughout the country.

Court of Appeal.

No. 2.

In the Estate of James White, deceased.

Lord Hanworth, M.R., and Scrutton and Sargant, L.JJ. 14th July.

PROBATE—ADMINISTRATION TO INSOLVENT ESTATE—MINORITY INTEREST—PROPOSED GRANT TO WIDOW AS SINGLE ADMINISTRATRIX—JUDICATURE (CONSOLIDATION) ACT, 1925, 15 & 16 Geo. 5, c. 49, ss. 160 (1), 162 (1)—COURT OF PROBATE ACT, 1857, 20 & 21 Vict., c. 77, s. 73.

Where there is a minority or a life interest, the court has no power under s. 162 *of the Judicature (Consolidation) Act*, 1925, *to grant letters of administration solely to a person who is interested in the deceased's estate.* Semble, *in such circumstances a sole grant cannot be made at all to a person not being a trust corporation.*

This was an appeal by the widow from a decision of Mr. Justice Hill refusing her application to be appointed sole administratrix of her husband's estate. Counsel for the applicant stated that the deceased died intestate leaving an estate which was believed to be hopelessly insolvent, so that there would be nothing for the unsecured creditors and nothing for the widow and children. A receiver had been appointed in the Chancery Division, but it was important that the appellant should be appointed administratrix in order to deal with certain urgent matters. There were eight race horses owned by the deceased in training, each costing £5 a week, and there had been an order for their sale. The death made all the racing entries in respect of the horses void, so that it was important to sell the horses as quickly as possible to enable their purchasers to enter them afresh. For that purpose it was essential to get somebody who could make a valid title. There was a difficulty in that the horses were not in the possession of the receiver of the estate; they were at training stables, and the trainer claimed a lien for their keep. No one was willing to join with the widow in the administration, but the Westminster Bank, the largest creditor, and the receiver, both represented by counsel, were willing that the widow should be appointed alone. Counsel for the applicant said that formerly these appointments were made under s. 73 of the Court of Probate Act, 1857, which gave the court an almost unfettered discretion. That section had now been replaced by s. 162 of the Supreme Court of Judicature (Consolidation) Act, 1925.

Section 160 (1), was as follows:—

"Probate or administration shall not be granted to more than four persons in respect of the same property, and administration shall, if there is a minority, or if a life interest arises under the will or intestacy, be granted either to a trust corporation, with or without an individual, or to not less than two individuals . . ."

That section, however, must be read with s. 162, which gave the court a discretion as to the persons to whom administration was to be granted:—

"In granting administration the High Court shall have regard to the rights of all persons interested in the estate of the deceased person or the proceeds of sale thereof . . . and any such administration may be limited in any way the Court thinks fit:

"Provided that where the deceased died wholly intestate as to his estate administration shall—

"(*a*) unless by reason of the insolvency of the estate, or other special circumstances, the Court thinks it expedient to grant administration to some other person; be granted to some one or more of the persons interested in the residuary estate of the deceased, if they make an application for the purpose . . ."

Under that proviso it was submitted that the court could, by reason of the insolvency of the estate and/or other special

circumstances, grant letters of administration to the applicant. She would be a suitable "some other person." Counsel referred to *In re Herbert* (*deceased*), 1926, P. 109.

Lord HANWORTH, M.R., said that on considering s. 160 of the Act of 1925 it was clear that when the court actually knew, as in the present case, that there was a minority interest it could not make a grant to less than two persons. Counsel for the widow had relied upon the proviso to s. 162 as giving the court a discretion, but the grant there referred to was to be to one or more of the persons interested, or, alternatively, if the court thought it expedient, to "some other person." The widow was clearly a person interested, so that a grant to "some other person" would not be fulfilled by a grant to her. It was argued that s. 162 must be read with s. 160 and that the combined effect of the two sections was that "some other person" meant, generally, that the court had a discretion to make a grant to one person. It was said that s. 162 was meant to replace the very wide discretion given to the court by s. 73 of the Court of Probate Act, 1857, but s. 73 had not come after a preceding section which gave the very explicit directions contained in s. 160. The latter was a new section and important, because of the interest taken by a widow in an intestate husband's estate under the Administration of Estates Act, 1925. It was a section inserted to protect the interest of minors or tenants for life. It was not essential to determine, but it perhaps was right to express his view that the proviso could not be invoked to override the express words of s. 160. The appeal must therefore be dismissed. As regarded the matter of the race horses, an order had been made by Mr. Justice Eve for their sale. The trainer must obey the order, but his right of lien for expenses incurred in keeping them, if he had one, would be protected.

SCRUTTON, L.J., in delivering judgment to the same effect, said that as at present advised he was not satisfied that the decision in *In re Herbert* (*deceased*) was right.

SARGANT, L.J., concurred.

COUNSEL: *Cotes Preedy* and *H. B. Durley Grazebrook*, for the applicant; *Talbot Ponsonby*, for the Westminster Bank, Limited, a creditor of the estate; *Sims*, for the receiver of the estate.

SOLICITORS: *O. L. Richardson; Swann, Hardman and Co.*

[Reported by J. F. COMPTON MILLER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

De Le Garde *v.* Worsnop & Co.

Clauson, J. 13th & 16th May.

ARBITRATION—SALE OF BUSINESS—AGREEMENT SUBJECT TO CONDITION EXPRESSED THEREIN—SUBMISSION TO ARBITRATION—DISPUTES ARISING AS TO ANY CLAUSE, MATTER OR THING IN THE AGREEMENT—STAYING PROCEEDINGS—QUESTIONS OF FACT—ARBITRATION ACT, 1889, 52 & 53 Vict. c. 49, s. 4.

Where a dispute arose on a contract as to the meaning of a clause therein which dealt with tests that the purchaser was making, the purchaser contending that the tests were unsatisfactory, and the vendor that they signed the contract on the faith of an assurance by the purchaser that the tests were proving satisfactory, and the contract contained a clause that if any dispute should arise between the parties as to the agreement or any clause, matter or thing therein contained, or the intention or construction thereof, or in anywise relating thereto, the same should be referred to arbitration under the Arbitration Act, 1889, *it was held that such dispute did come within the clause, and was not a dispute* dehors *the contract, and accordingly that the action started in respect of it must be stayed.*

Hirji Mulji *v.* Cheong Yue Steamship Co., 1926, A.C. 497, *distinguished.*

Smith Coney & Barrett *v.* Becker, Grey & Co., 1926, 2 Ch. 86, *applied.*

This was a summons issued by the defendants to stay all proceedings in the action pursuant to s. 4 of the Arbitration Act, 1889. The action was for a declaration that a certain agreement had been terminated, and was no longer binding on the parties thereto, and for the return of the deposits. The facts were as follows: By an agreement dated 29th July, 1926, the defendants agreed to sell and the plaintiff agreed to buy the defendants' business of Alklama Electric Batteries for a sum of £15,000, and the plaintiff paid the deposit of £750. The sale was to be completed on 30th November, 1926. Clause 5 of the agreement provided that it should be subject to the condition that "the tests which are now being carried out by or on behalf of the purchaser prove to his reasonable satisfaction that the Alklama electric batteries now being made by the vendors are capable of fulfilling the claims made for them." The agreement further provided that if any dispute should arise between the parties as to the agreement or any clause, matter or thing therein contained or the intention or construction thereof or in anywise relating thereto the same should be referred to arbitration under the Arbitration Act, 1889. In December, 1926, the plaintiff refused to complete the purchase on the ground, as he alleged, that his experts reported that the tests they had made of the batteries failed to substantiate the representations made about them by the defendants upon the facts of which he alleged he had entered into the contract. The defendants contended that the tests referred to in cl. 5 were tests in course of being made by or on behalf of the plaintiff previous to the execution of the agreement, and that the plaintiff had assured the defendants before the execution thereof that those tests were proving satisfactory and would be finally completed within a few days, and on the faith of that assurance they consented to cl. 5 being inserted in the agreement, and that in August, 1926, the plaintiff reported to them that those tests had been completed to his satisfaction. The plaintiff disputed the defendants' version of the facts, and contended that the defendants knew that he left for America in July, 1926, for the purpose of making tests, and that the tests referred to in the agreement were not completed, and contended that the agreement was conditional upon the tests proving satisfactory to the purchaser. The whole agreement fell through if that condition was not fulfilled, including the submission to arbitration. Even if this event was foreseen and provided for by the contract, the court had a discretion to refuse a stay and sufficient ground was shown in this case why it should do so. They referred to *Grey* v. *Tolme*, 1914, 31 T. & K. 137, *Pury* v. *Young*, 1879, 14 Ch. D. 200, and *Kitts* v. *Moore*, 1895, 1 Q.B. 253. The defendants contended that these questions did not arise *dehors* the contract, but were foreseen and provided for by it and referred to *Smith Coney & Barrett* v. *Becker, Grey & Co.*, 1916, 2 Ch. 86.

CLAUSON, J., after stating the facts, said if in fact the condition has not been fulfilled the result is that the obligation of the plaintiff to purchase has come to an end and cannot be enforced against him. But that obligation if it came to an end must have done so not by reason of something which had occurred *dehors* the contract, but by reason of certain events which had occurred and which by reason of the terms of the contract had resulted in his no longer being under an obligation to purchase. The dispute, whether or not, according to the true construction of the condition in cl. 5 of the agreement, having regard to the circumstances, the plaintiff is released from his obligation to purchase is plainly a dispute arising as to a clause, matter or thing referred to in that clause. It is not a case where a contract, having been entered into, comes to an end by reason of some circumstances external to it as was the case in *Hirji Mulji* v. *Cheong Yue Steamship Company*, 1926, A.C. 497. In such a case a clause providing for the submission to arbitration follows the same fate as the contract in which it is contained. Accordingly these proceedings in the action will be stayed until further order. The plaintiff will be ordered to pay the defendants' costs of the summons,

and the costs of the action will be in the discretion of the arbitrators.

COUNSEL: *Clayton*, K.C., and *Wilfrid Hunt*; *Spens*, K.C., and *Swords*.

SOLICITORS: *Reid Sharman & Co.*; *Sheard, Breach, Wace and Roper*.

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

In re Williams; The Public Trustee *v.* Williams and Others.

Clauson, J. 17th, 18th and 19th May.

WILL—CONSTRUCTION—CHARITY—GIFT TO ASSIST EDUCATION OF CANDIDATES FOR HOLY ORDERS—POWER TO TRUSTEES TO CHANGE THE OBJECTS IF INTEREST OF THE CHURCH BETTER SERVED THEREBY.

A power to trustees of a good charitable gift for the Church to change the objects of that gift if the interest of the Church is better served by so doing is not a power which has the effect of enabling objects to be brought within the scope of the trust which are other than charitable and which would make the gift fail.

The Commissioners for Special Purposes of Income Tax *v.* Pemsel, 1891, A.C. 531, *followed*.

Dunne *v.* Byrne, 1912, A.C. 407, *applied*.

Originating summons. This was a summons taken out by the trustee of the will to have the question determined whether the gift in cl. 3 of the will was a valid charitable gift or was rendered void by reason of the power conferred upon the administrative trustees under cl. 12 of the will. The facts were as follows:—The testator, the Rev. R. C. Williams, who died in 1924, by his will, in which he described himself as a clerk in holy orders, gave all his property to the public trustee upon trust for investment, and directed that the income (subject to the amounts thereinafter mentioned) should be paid to the Bishops of St. David's and Bangor, the rector of Llanystumdwy, and the vicars of Lampeter and Dolwyddelen and their successors, together with a layman appointed by the conference of each of the dioceses of Bangor and St. David's, whom he nominated the administrative trustees, and after stating that his wife left her interest in certain property to him to be used as he wished, but for preference for church purposes, the testator, in expressed accordance with her wish, devised, by cl. 3 of his will, all that he should die possessed of as a fund for assisting the education of candidates for holy orders in the Church of England, to be administered by the above-named trustees, and the testator gave certain books and furniture, and certain small annuities out of income, and then declared, by cl. 12 of his will, as follows: "If for any sufficient reason whether disendowment may or may not have taken place, the trustees decide that the interests of the Church could be better served by any changes in the method of administering or even in the object to which the fund is applied under my will such change or changes may be made with the several consents expressed by a majority of the diocesan conferences of Bangor and St. David's." By a codicil the testator bequeathed some further annuities.

CLAUSON, J., after stating the facts, said:—But for the power of cl. 12 of the will, the gift contained in cl. 3, is clearly a good charitable gift. By cl. 12 power is conferred upon the trustees to apply the fund to an object other than those stated in cl. 3, and the only limitation upon the power is that in making the change the trustees must for sufficient reasons, decide that the interests of the Church can be better served thereby. The question is whether the power has the effect of enabling objects to be brought within the scope of the trust which are other than charitable. If the effect of cl. 12 has that effect, then the gift fails, and the fund is undisposed of and passes to the statutory next-of-kin of the testator. True, it is, that charity in the legal sense of the term, comprises (amongst other objects) the advancement of religion (see *The Commissioners for Special Purposes of Income Tax* v. *Pemsel*, 1891, 1 A.C. 531, and the judgment of Lord Macnaghten, at p. 583). It is well settled that a trust for religious purposes must be treated *prima facie* as a gift for charitable purposes, and is a good charitable trust, but that is so only when the trust tends directly or indirectly to the benefit of the public: see *Dunne* v. *Byrne*, 1912, A.C. 407; *In re White*, 1893, 2 Ch. 41; *Cocks* v. *Manners*, 1871, L.R. 12 Eq. 574. In the present case there are sufficient indications in the will that the only other objects which the testator had in mind and to which he empowered the trustees to change the application of the fund under cl. 12 of the will, were religious objects or purposes in the interests of the Church as an organisation existing for the instruction and edification of the public. It is to be observed that the testator described himself as a clerk in holy orders. There is the recital of the wish of the testator's wife, and the devise is expressed to be made in accordance therewith, and the majority of the trustees are holders of public offices in the Church. Accordingly the gift contained, in cl. 3, is a good charitable gift.

COUNSEL: *A. de W. Mulligan*, *Cecil Turner*, *Farwell* K.C., *B. A. Hall*, *Stamp*, and *Stafford Crossman*.

SOLICITORS: *Philip Rider Christie*, for *Bone & Payne*, Llandudno; *Pritchard, Englefield & Co.*, for *Lloyd P Davies*, Manchester; *Simpson & Co.*

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

High Court—King's Bench Division

Vosper *v.* Great Western Railway Co.

Atkin, L.J., Lawrence, L.J. (sitting as additional Judges of the K.B.D.). 18th July.

RAILWAY COMPANY—COMMON CARRIERS—HAND LUGGAGE—CARRIED IN COMPARTMENT—NO NEGLIGENCE OF PASSENGER—COMPANY'S LIABILITY FOR LOSS.

A railway company are liable as common carriers for the loss of the hand luggage of a passenger provided that the loss did not arise by reason of his negligence. A passenger is not obliged to remain in the compartment all the time when he may be required to go to another part of the train for any legitimate purpose.

Appeal from the Marylebone County Court. On Friday, the 26th February, 1926, the plaintiff, Stanley Vosper, an insurance assessor, travelled from London to Exeter, taking as luggage a suit-case. On the following Monday, the 1st March, he proceeded to St. David's Station at 9.40 a.m. and handed the suit-case to a porter to be put into the cloak room until he should return in time to catch the 1.45 p.m. to Paddington. When this train, by which he travelled, arrived in London, the plaintiff was unable to find his suit-case, and brought an action against the railway company. Before the county court judge contradictory evidence was given regarding the disposal of the suit-case when the plaintiff returned to the station to catch the 1.45 p.m. train. The plaintiff alleged that he saw the porter place the suit-case in the luggage van of one of the coaches which was standing in readiness to be attached to the Plymouth express; the defendants contended that the plaintiff agreed with the porter that the suit-case should be placed in a first-class compartment, which was done. The county court judge accepted the defendants' story. The plaintiff had in fact travelled from Exeter in a third-class compartment in the company of friends. Judgment was given for the plaintiff for £51, the assessed value of the suit-case and contents. The defendants appealed. Counsel for the appellants submitted that the respondent never went near his luggage during the journey, and that the railway company were not common carriers in respect of luggage carried in a compartment in which the passenger was not travelling. Counsel for the respondent contended that there was no evidence when the loss of the suit-case occurred, and that the onus was on the appellants to show that the loss occurred in consequence of the respondent's negligence.

ATKIN, L.J., after stating the facts, said that they were bound to accept the county court judge's finding, that the suit-case had been placed in a first-class compartment at the request of a passenger who held a third-class ticket. Dealing with the liability of the railway company as common carriers in respect of luggage lost from a railway compartment, his lordship pointed out that the company was not liable if it could be shown that the loss in the case of hand luggage resulted from the negligence of the passenger. In support of this he cited at length relevant passages from the judgment of Lord Watson in *Great Western Railway Co.* v. *Bunch*, 13 App. Cas. 31. He was of the opinion, however, that, in these days, when luggage was frequently carried in the corridor as close to the passenger's compartment as possible, and when either for purpose of taking meals, or in order to smoke, the passenger did not remain all the time in the same compartment, in that event the company remained still under the liability to carry his luggage as common carriers, subject to the exception of negligence already stated. With reference to the suit-case being placed in a first-class carriage, his lordship stated that different considerations might have arisen if it had been established that the passenger had the intention of travelling first-class.

COUNSEL: For the appellants, *Barrington-Ward*, K.C., and *Kenelm Preedy*; for the respondent, *Phineas Quass.*

SOLICITORS: *A. G. Hubbard*; *H. F. K. Ireland.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Societies.

Gray's Inn.

The benchers of Gray's Inn gave an afternoon party in the gardens and hall of the society on Friday the 8th inst. The guests were received by the treasurer (Lord Merrivale) and the Hon. Mrs. Atlay. The band of the Royal Air Force and the string band of the Grenadier Guards provided a programme of music during the afternoon, and two performances were given by the Margaret Morris Dancers on the lawn. There was an exhibition of silver and ancient MSS. in the library. Among those who accepted invitations were:

The Lord Chancellor and Viscountess Cave, the Lord Chief Justice and Lady Hewart, the Master of the Rolls and Lady Hanworth, Lord and Lady Carson, Viscount and Viscountess Dunedin, Lord and Lady Shaw of Dunfermline, Mr. Justice and Lady Acton, Mr. Justice and Lady Astbury, Lord Justice and Lady Bankes, Mr. Justice and Lady Bateson, Sir Archibald and Lady Bodkin, Sir Edward and Lady Clarke, Mr. Justice and Lady Clauson, Mr. Justice and Lady Eve, Sir Charles and Lady Eves, Sir Patrick and Lady Hastings, Mr. Justice Hill, Mr. Justice and Lady Horridge, Sir Adrian and Lady Knox, Sir T. R. Hughes, Lord Justice and Lady Lawrence, the Hon. Sir Malcolm and Lady Macnaghten, Lord and Lady Monkswell, Lord Muir Mackenzie, Lord Phillimore, Sir James and Lady Remnant, Lord Riddell, Mr. Justice and Lady Romer, Mr. Justice Russell, the Dean of St. Paul's and Mrs. Inge, Mr. Justice and Lady Salter, Lord Sandhurst, Mr. Justice and Miss Sankey, Lord Justice and Lady Sargant, Sir Claud and Lady Schuster, Lord Justice and Lady Scrutton, Sir John and Lady Simon, Sir Henry and Lady Slesser, the Bishop of Southwark and Mrs. Garbett, Mr. Justice and Lady Swift, the Dean of Westminster and Mrs. Norris, the Recorder of London and Lady Wild, and the Bishop of Worcester.

London University.

The following awards have been made in the Faculty of Laws at University College:—

Leader's Prizes in Equity.

Second Year Students:	A. A. Elliott (London School of Economics).
	L. A. Moules.
Proxime accessit:	V. H. Cullingford (King's College).
	P. E. Jones.
Third Year Student:	A. T. Roach.
Proxime accessit:	F. M. Landau and S. Jacobs, equal.

Solicitors' Benevolent Association.

The monthly meeting of the Directors of this Association was held at The Law Society's Hall, Chancery-lane, London, on the 13th inst., the Right Hon. Sir William Bull, Bart, M.P., in the chair. The other Directors present were Messrs. E. E. Bird, A. C. Borlase (Brighton), E. R. Cook, W. F. Cunliffe, T. S. Curtis, E. F. Dent, A. G. Gibson, E. B. Knight, C. G. May, H. A. H. Newington, R. W. Poole, J. F. Rowlatt, and A. B. Urmston (Maidstone). The sum of £2,490 was distributed in grants of relief and annuities. Seventy-five new members were elected, and other general business transacted.

The Union Society of London.

President: Mr. J. SINGLE.

The Union Society of London met for the last debate of the season recently, in the Middle Temple Common Room. The subject under discussion was "That this House views with alarm the modern tendency towards Industrial Amalgamation." Mr. J. G. Baker (barrister), who opened the debate, said that amalgamations had been tried and found wanting at the end of the nineteenth century. Amalgamations lead to pools and restrictions and harm the consumer. Mr. J. M. G. Buller (barrister), opposed on the grounds that amalgamations meant increased efficiency, lower working costs, greater security and were to the advantage of the workers. There spoke in favour of the motion: Mr. H. F. Ryan (barrister), Mr. W. L. Jenkins (barrister), and against: Mr. D. F. Brundret (barrister), Mr. L. A. Freeman, Mr. J. M. Symmons (barrister), Mr. C. W. Shawcross (barrister). Mr. G. H. Croom spoke impartially both for and against the motion. The motion, on a division, was lost by seven votes to four.

Society of Public Teachers of Law.

The nineteenth annual general meeting was held on 9th July at the London School of Economics and Political Science, by permission of the Director. After the formal business had been transacted, the outgoing President (Dr. E. Leslie Burgin, The Law Society), addressed the meeting on "The Education and Training of the Solicitor's Articled Clerk." A discussion followed in which the following, among others, took part: Professor J. E. G. de Montmorency (University of London), Mr. E. C. S. Wade (The Law Society), Mr. Harold Potter (University of Birmingham), Dr. A. E. Chapman (University of Leeds), and Dr. W. C. Bolland. Mr. D. Hughes Parry, M.A., LL.M. (University of London) read a paper on "Teachers of Law and the New Property Legislation." Professor H. D. Hazeltine and Mr. A. L. Goodhart (University of Cambridge) and Mr. Harold Potter (University of Birmingham), amongst others, took part in a discussion on the paper. The officers elected for 1927-1928 are—President, Professor H. C. Gutteridge (University of London); Vice-president, His Honour Judge Dowdall, K.C. (University of Liverpool); Hon. Treasurer, Dr. P. H. Winfield (University of Cambridge); Hon. Secretary, Mr. E. C. S. Wade (The Law Society).

The Society entertained at dinner on the previous evening, in the Hall of the Worshipful Company of Painters, lent for the occasion by the Master, Warden and Court, the following guests: The Viscount Sumner, Lord Merrivale, Mr. Justice Tomlin, Sir Claud Schuster, K.C.B., K.C., J.P., His Honour Judge Dowdall, K.C., Sir Benjamin Cherry, LL.B., Sir William Beveridge, K.C.B., Vice-Chancellor Courthope Wilson, the Master and the Clerk of the Painters' Company, Dr. A. H. Coley (President of The Law Society, 1926-1927), Mr. R. M. Welsford, and Mr. E. R. Cook (Secretary to the Law Society).

SOCIETY OF MINIATURE RIFLE CLUBS.

Mr. F. C. Thomson, K.C., M.P., ex-Solicitor-General for Scotland, has interested himself in the forthcoming national Scottish meeting of riflemen, which opens at Aberdeen on the 3rd and closes on the 6th August, in that he has provided the fourteen prizes to be awarded to successful marksmen in the competition styled the "Thomson." This meeting is one of several promoted annually by the Society of Miniature Rifle Clubs, which is the governing body of the movement for Great Britain, and has under its direction and jurisdiction 1,650 local rifle clubs and associations, 243 being allocated to Scotland.

THE MIDDLESEX HOSPITAL.

WHEN CALLED UPON TO ADVISE AS TO LEGACIES, PLEASE DO NOT FORGET THE CLAIMS OF THE MIDDLESEX HOSPITAL, WHICH IS URGENTLY IN NEED OF FUNDS FOR ITS HUMANE WORK.

Legal Notes and News.

Appointments.

Mr. E. D. SPENCER, LL.M., solicitor, Taunton, has been appointed Assistant in the office of Mr. J. H. Field, O.B.E., LL.B. (Lond.), solicitor, Town Clerk and Clerk of the Peace of the County Borough of Huddersfield. Mr. Spencer was admitted in 1923.

Mr. WILLIAM WOODWARD, solicitor, Deputy Town Clerk of Middleton, has been appointed Deputy Town Clerk of Dudley. Mr. Woodward was admitted in 1925.

Mr. T. C. BONE, solicitor, Assistant Town Clerk of Whitehaven, has been appointed Town Clerk of that borough in succession to Mr. Leonard Warden, recently appointed Clerk and Solicitor to the Hendon Urban District Council.

Mr. ALBERT REGINALD JOHNSTON TURNER, solicitor, of the firm of Messrs. E. F. Turner & Sons, 115, Leadenhall-street, E.C., has been elected Master of The Merchant Taylors' Company for the ensuing year. Mr. Turner was admitted in 1903.

Mr. REGINALD L. GOSLING, a partner in the firm of Messrs. John Hodge & Co., solicitors, 27, The Boulevard, Weston-super-Mare, has been appointed Clerk to the Justices to the Weston-super-Mare Petty Sessional Division in the place of the late Mr. John Hodge, who died suddenly on the 16th May last. Mr. Gosling was admitted in 1920.

The Westminster City Council has decided to extend the period of service of Sir JOHN HUNT, O.B.E., Town Clerk, for a further period of one year from September next. Sir John Hunt has held the appointment of town clerk of that city for a great number of years.

Professional Partnerships Dissolved.

GEORGE GRINLING HARRIS and JAMES THOROUGHGOOD PEET, solicitors, 22 Billiter Street (Grinling, Harris & Peet), by effluxion of time as from 30th June.

DAVID CHURTON TAYLOR and FRANK PUDEY BRINDLEY, solicitors, 47, Lincoln's Inn Fields, Westminster (Barnard and Taylor), by mutual consent as from 31st March, 1926. The business will be carried on in future by D. C. Taylor.

WILLIAM CHARLES BLANDY, WILLIAM EDWARD MOERAN BLANDY and REGINALD ERNEST NOTT-BOWER, solicitors, Reading (Blandy & Blandy), as from 30th June. Such business will be carried on in future by W. C. Blandy and W. E. M. Blandy at same address.

EDWARD BOWLES DRIFFIELD, RONALD PERCY CLAYTON and RONALD STEWART-BROWN, solicitors, Liverpool (Collins, Robinson, Driffield, Clayton & Stewart-Brown), by mutual consent as from 30th June. E. B. Driffield and R. Stewart-Brown will in future continue the business under the style of Collins, Robinson, Driffield & Stewart-Brown.

Resignations.

Mr. T. W. WEEDING, solicitor, Clerk of the Peace, Clerk to the Surrey County Council and Standing Joint Committee, and Clerk to the Surrey Smallpox Hospital Committee, who, though over eighty years of age, still leads an active and busy life, has decided to retire at the end of the year. Mr. Weeding was admitted in 1870 and is a member of The Law Society.

Mr. FREDERICK RYALL, solicitor, Town Clerk of Bermondsey, will retire from office in September next under the provisions of the Metropolitan Borough Councils (Superannuation) Act, 1922. Mr. Ryall, who was admitted in 1885, has held the appointment of town clerk of that metropolitan borough since the year 1900, and was six years previously appointed clerk to its predecessors, the Bermondsey Vestry.

Wills and Bequests.

Mr. Frank Tootell, of Fordwych, Oxgate Gardens, Cricklewood, N.W., and of Edgware, for some years Clerk to the Justices for the Gore Division of Middlesex, who died on 22nd March, aged sixty-seven, left estate of the gross value of £4,432. He left £100 to Alfred Herbert, of Argyle Road, West Hendon, N.W., Sergeant of Police of the X Division, "as a slight appreciation of the very many times he has assisted me as a warrant officer sergeant at the Hendon Police Court."

Mr. Henry Joseph Liggins, solicitor (82), of Midholm, Golders Green, N.W., left estate (limited to settled land) of the gross value of £4,500.

Mr. William Beldam, solicitor and Notary Public, of Maltravers-house, Littlehampton, died on 22nd March, aged seventy-nine, leaving estate of the gross value of £55,427. He left £1,000 to the Littlehampton and District Hospital; £300 to the Crawley Cottage Hospital; £100 each to the Girl Guides, Littlehampton, the Boy Scouts, Littlehampton and Arundel Branch, St. John Ambulance Brigade, and the Littlehampton and District Nursing Association; and £200 each to his housekeeper, Alice Stanford, and his man, Mark Mustchin.

Mr. William Ontario David (64), solicitor, of Belle Rive, Nyon, Switzerland, left estate in this country of the gross value of £27,766.

Mr. George Walter Brown (74), of Kismet, Keswick-road, Boscombe, Bournemouth, late Chief Clerk of the Chancery Office, Manchester, left estate of the gross value of £6,744.

Sir Charles Porten Beachcroft, of Montjoie, Camberley, Surrey, late Judge of the Calcutta High Court, who died on 15th May last, aged fifty-six, leaving unsettled property of the gross value of £13,682, with net personalty £10,273, left all to his wife absolutely as she survived him. Had she not survived him, he had left, subject to various other provisions, the residue of his estate as to one-half to found a scholarship at Rugby School ("the school to which I owe more than I can ever hope to repay") in memory of his brother, Gerald William, "a scholar of that school, who died for his country in the Great War"; one-half to the London Hospital to endow a bed or beds in his wife's name, "as a memorial of her constant sympathy for the poor and suffering."

MERCHANDISE MARKS ACT.

FIRST PART NOW IN FORCE.

The first part of the Merchandise Marks Act, 1926, which provides that imported goods bearing the name or trade mark of a British manufacturer or trader shall not be sold unless accompanied by an indication of origin, is now in force, the second part being already operative.

A Board of Trade official points out that the common belief that to comply with the Act all imported goods must in future bear the name of their country of origin was quite mistaken. Foreign goods could still be imported and sold with no mark on them at all. But if these goods had any name or trade mark attached, such as might appear to indicate British origin, the Customs officials might refuse to allow them to enter the country unless such marking had by its side a clear indication of the country of origin or they were marked "foreign." The Act did not apply to goods sold directly for export, to second-hand goods, to foodstuffs sold at any hotel or restaurant for consumption on the premises, or to cooked, cured or preserved foodstuffs where the cooking or other process had been effected in the United Kingdom.

THEATRICAL AGENCIES.

A Bill dealing with theatrical agencies and registries has been introduced in the House of Commons by Mr. Frank Rose, who is a member of the Council of the Stage Guild. The measure is supported by Mrs. Philipson, Sir Walter de Frece, Colonel James, Mr. Sexton, Mr. Hayday, Major Sir Archibald Sinclair, Mr. Macpherson, Mr. Kennedy and Mr. Kidd. Its object is stated to be to protect the humbler members of the profession, and, among other things, it is proposed to limit the commission to be payable to a maximum of 10 per cent. for ten weeks. Too often, it is said, the former custom of the stage is departed from, and the percentage is charged not only during the whole term of an engagement, but even when an engagement is renewed. The Bill is also designed to tighten up the law regarding the registration of agencies and to prevent the establishment of a registry without a proper licence. It is further proposed that preliminary fees should be prohibited.

DAMAGES AGAINST TRADE UNION.

The "closed shop" principle in Austria was dealt a severe blow by the Supreme Court when reversing the decision of two lower courts, when, on the 28th ult., it awarded damages against the Social Democratic Union of Stage and Cinema Theatre Employees for having brought about the dismissal of a workman who was not a member of that union.

The union was able to produce in court a contract with the Association of Cinema Theatre Owners, according to which it alone was entitled to fill vacancies as they occurred in the trade. The Supreme Court, however, held that it was a breach of morals to attempt to enforce the contract legally. It did not, on the other hand, dispute the right of a workman to accept employment with whomsoever he desired, or that of an employer to take on a man of a certain political party only.

GERMAN ART PUBLISHERS' CLAIMS DISMISSED.

Claims by the Berliner Verlag G.m.b.H., art publishers, of Berlin, against the Rembrandt Intaglio Printing Company, Limited, of Lancaster, and the Fine Art Publishing Company, of London, for unpaid calls on shares held by both British debtors in the claimants' firm before the war were dismissed by the Second Division of the Anglo-German Mixed Arbitral Tribunal, sitting in London.

The German Government Agent (Dr. Lehmann) said that before the war the German company was largely financed by British and French art printing undertakings, its business being principally the sale of their productions. On the outbreak of war the claimants were in financial difficulties because the German public would not buy British and French goods, and, further, there was the probability of the concern being sequestrated on the ground of its being enemy-controlled. In December, 1914, a call was made on the foreign holders for the outstanding 25 per cent. balance on their shares—£765 11s. in the case of the Rembrandt Company, and £401 15s. in the case of the Fine Art Company. Owing, probably, to the restrictions on payment to enemy creditors by British debtors during the war, these calls were not met, and in due course the shares were declared forfeited.

Mr. H. G. Robertson, counsel for the British debtors, contended that a call made by a German national in respect of shares held by a British national during the war was not a debt within Art. 296 of the Treaty of Versailles; and, further, that the calls were not *bona fide* in that they were made solely with the object of eliminating British shareholders and transferring their holdings to German purchasers at the auction.

Mr. Moritz, in evidence, said he purchased the shares in order to keep the business a going concern until the end of the war, intending to return the shares to the British debtors. In fact he offered to return the shares in 1920, but the debtors refused to accept them.

Cross-examined by the British Government Agent (Mr. B. Honour), the witness said it did not appear to him to be important that the best price possible should be obtained at the auction so long as the provisions of the German Civil Code were observed.

Both claims were dismissed, with costs.

COURT DINNER TO THE LORD CHANCELLOR.

In the report of this dinner which appeared in our issue of the 9th inst. (71 SOL. J., at p. 565), the speech attributed to Lord Darling, in reply to the toast of "Our Guests," was in fact delivered by Sir Patrick Hastings, K.C., who responded for "The Legal Profession."

The Property Mart.

The leasehold interest in No. 6, Copthall Avenue, E.C.2, together with the goodwill of the business, which was offered for sale on Tuesday, the 19th inst., at Winchester House, Old Broad Street, by Messrs. Tuckett, Webster & Co. (as announced in THE SOLICITORS' JOURNAL, on Saturday, 2nd July), was sold at the auction for £1,400.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE.

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Romer.
M'nd'y July 25	Mr. Ritchie	Mr. More	Mr. Bloxam	Mr. Hicks Beach
Tuesday .. 26	Synge	Jolly	Hicks Beach	Bloxam
Wednesday 27	Hicks Beach	Ritchie	Bloxam	Hicks Beach
Thursday . 28	Bloxam	Synge	Hicks Beach	Bloxam
Friday 29	More	Hicks Beach	Bloxam	Hicks Beach
Saturday .. 30	Jolly	Bloxam	Hicks Beach	Bloxam

Date.	Mr. Justice Astbury.	Mr. Justice Clauson.	Mr. Justice Russell.	Mr. Justice Tomlin.
M'nd'y July 25	Mr. Ritchie	Mr. Synge	Mr. Jolly	Mr. More
Tuesday .. 26	Synge	Ritchie	More	Jolly
Wednesday 27	Ritchie	Synge	Jolly	More
Thursday . 28	Synge	Ritchie	More	Jolly
Friday 29	Ritchie	Synge	Jolly	More
Saturday .. 30	Synge	Ritchie	More	Jolly

The Long Vacation will commence on Monday, the 1st day of August, 1927, and terminate on Tuesday, the 11th day of October, 1927, inclusive.

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-à-brac a speciality.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement, Thursday, 28th July, 1927.

	Middle Price 20th July	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	84 5/16	4 15 0	—
Consols 2½%	54⅝	4 11 6	—
War Loan 5% 1929-47	101⅛	4 19 0	4 19 0
War Loan 4½% 1925-45	95⅝	4 14 6	4 17 0
War Loan 4% (Tax free) 1929-42 ..	101	3 19 0	3 19 6
Funding 4% Loan 1960-90	86 1/16	4 12 6	4 14 0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years ..	93⅜	4 6 0	4 9 6
Conversion 4½% Loan 1940-44 ..	96½	4 13 6	4 16 0
Conversion 3½% Loan 1961	76⅛	4 12 0	—
Local Loans 3% Stock 1921 or after ..	63¾	4 14 0	—
Bank Stock	248½	4 17 0	—
India 4½% 1950-55	93	4 17 0	5 0 0
India 3½%	70⅝	4 19 0	—
India 3%	60½	4 19 0	—
Sudan 4½% 1939-73	92¾	4 17 0	4 18 0
Sudan 4% 1974	84½	4 15 0	4 18 6
Transvaal Government 3% Guaranteed 1925-53 (Estimated life 19 years) ..	80¾	3 14 0	4 12 6
Colonial Securities.			
Canada 3% 1938	84	3 12 0	4 18 6
Cape of Good Hope 4% 1916-36 ..	93½	4 5 6	5 0 0
Cape of Good Hope 3½% 1929-49 ..	80	4 8 6	5 0 6
Commonwealth of Australia 5% 1945-75	97¾	5 2 0	5 2 6
Gold Coast 4½% 1956	93½	4 16 0	4 18 0
Jamaica 4½% 1941-71	92½	4 17 6	4 19 0
Natal 4% 1937	93	4 6 0	4 19 6
New South Wales 4½% 1935-45 ..	90¼	5 0 0	5 9 0
New South Wales 5% 1945-65	97¼	5 3 0	5 4 0
New Zealand 4½% 1945	96	4 14 0	4 18 6
New Zealand 5% 1946	101⅛	4 19 0	4 19 0
Queensland 5% 1940-60	98½	5 2 0	5 3 6
South Africa 5% 1945-75	101	4 19 0	4 19 6
S. Australia 5% 1945-75	97⅜	5 2 6	5 3 0
Tasmania 5% 1945-75	98¾	5 1 0	5 1 6
Victoria 5% 1945-75	98½	5 1 6	5 3 0
W. Australia 5% 1945-75	97⅜	5 2 6	5 3 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corpn.	62¼	4 17 0	—
Birmingham 5% 1946-56	103¼	4 17 6	4 17 0
Cardiff 5% 1945-65	101¾	4 18 6	4 19 0
Croydon 3% 1940-60	69	4 7 6	5 0 0
Hull 3½% 1925-55	77⅝	4 10 0	5 0 0
Liverpool 3½% on or after 1942 at option of Corpn.	73	4 16 0	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	53¼	4 14 0	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	62¾	4 16 0	—
Manchester 3% on or after 1941 ..	62¼	4 16 0	—
Metropolitan Water Board 3% 'A' 1963-2003	62½	4 16 6	4 18 0
Metropolitan Water Board 3% 'B' 1934-2003	64¾	4 12 6	4 15 0
Middlesex C. C. 3½% 1927 47	82	4 5 6	4 17 6
Newcastle 3½% irredeemable	71¼	4 19 0	—
Nottingham 3% irredeemable	61¾	4 17 6	—
Stockton 5% 1946-66	100	5 0 0	5 0 0
Wolverhampton 5% 1946-56	102	4 18 0	4 18 6
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture ..	79½xd	5 0 6	—
Gt. Western Rly. 5% Rent Charge ..	97xd	5 3 0	—
Gt. Western Rly. 5% Preference ..	93½	5 7 0	—
L. North Eastern Rly. 4% Debenture..	74½	5 7 6	—
L. North Eastern Rly. 4% Guaranteed	71	5 12 6	—
L. North Eastern Rly.4% 1st Preference	63½	6 6 0	—
L. Mid. & Scot. Rly. 4% Debenture ..	78	5 2 6	—
L. Mid. & Scot. Rly. 4% Guaranteed ..	76¼	5 5 6	—
L Mid. & Scot. Rly. 4% Preference ..	71¼	5 12 6	—
Southern Railway 4% Debenture ..	77¾	5 3 0	—
Southern Railway 5% Guaranteed ..	97½	5 2 6	—
Southern Railway 5% Preference ..	90	5 11 0	—

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